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**A Critical Interrogation of Corporate Social Responsibility and
Global Distributive Justice**

By

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A thesis submitted in partial fulfilment of the requirements for the
degree of Doctor of Philosophy in Politics and International Studies.

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Table of Contents

Acknowledgements	i
Abstract	ii
1: Introduction.....	1
1.1 Subject Area.....	7
1.1.1 Contributions to Knowledge	9
1.1.2 Research Questions	15
1.2 Theoretical Framework	17
1.2.1 Cosmopolitan Suffering	17
1.2.2 The Liberal Basic Structure.....	21
1.3 Research Activities	25
1.4 Central Thesis	27
1.4.1 Central Argument.....	27
1.4.2 Profound Effects.....	29
1.5 Chapter Structure.....	35
1.6 Conclusion	40
2: Corporate Social Responsibility: An Historical Overview	42
2.1 Introduction	42
2.2 What is a Global Corporation?	45
2.2.1 Corporate Legal Personality.....	46
2.2.2 Globalisation of the Corporate Model.....	48
2.3 Historical Emergence of CSR.....	50
2.3.1 Period 1: Corporate Philanthropy pre-1945	51
2.3.2 Period 2: 1945- late 1980s.....	54
2.3.3 Period 3: late 1980s-Present.....	58
2.4 Codes of Conduct: Agents, Content and Procedures of Corporate Social Responsibility	62
2.4.1 Agents of CSR.....	63
2.4.2 Content of Codes.....	68
2.4.3 Procedures	75
2.5 Conclusion	80
3: Explaining CSR: Polanyian and Gramscian Insights	83
3.1 Introduction	83
3.2 The Value of Explanation	85
3.3 Embedded Liberalism and the Polanyian Double Movement	86
3.3.1 Embedded Liberalism	86
3.3.2 The Double Movement.....	88
3.4 The Globalisation of Embedded Liberalism	93
3.4.1 Globalisation of Embedded Liberalism.....	94
3.4.2 Resistance: A Neo-Polanyian Double Movement.....	97
3.4.3 CSR as a Reaction to Neo-Polanyian Resistance	99
3.5 A Neo-Gramscian Explanation: CSR as a Regime of Accumulation.....	104
3.5.1 CSR as a Regime of Accumulation.....	104
3.5.2 Consolidating the Interests of Capital: CSR as an Orthodoxy	107
3.6 Conclusion	114
4: Statist Conceptions of Global Distributive Justice	117
4.1 Introduction	117
4.2 Distributive Justice and Citizenship	120
4.2.1 Rawlsian Justice: From the Domestic to the International.....	121

4.2.2 Normative Critique.....	126
4.2.3 Empirical Critique	133
4.3 Distributive Justice and National Self-Determination	141
4.3.1 Normative Critique.....	144
4.3.2 Empirical Critique	148
4.4 Distributive Justice and Sovereignty	151
4.4.1 Empirical Critique	154
4.4.2 Normative Critique.....	158
4.5 Conclusion	163
5: Cosmopolitan Conceptions of Global Distributive Justice	166
5.1 Introduction	166
5.2 Cosmopolitan Paradigms of Thought	168
5.2.1 Methodological Cosmopolitanism	169
5.2.2 Moral Cosmopolitanism.....	171
5.2.3 Political Cosmopolitanism	175
5.2.4 Legal Cosmopolitanism.....	179
5.2.5 Summary	181
5.3 Existing Conceptions of Cosmopolitan Global Distributive Justice: Justifications and Principles	183
5.3.1 Justifications.....	184
5.3.2 Extended Rawlsian Principles	191
5.3.3 The Global Resources Dividend.....	192
5.3.4 Global Egalitarianism.....	197
5.4 Profound Effects on People's Life Chances and the Publicity Requirement: the Case for the Application of Principles of Global Distributive Justice to Corporations	200
5.4.1 The Institutional Make-Up of the Basic Structure.....	201
5.4.2 The Basic Structure and a Just Ethos	205
5.4.3 Global Corporations and The Basic Structure.....	208
5.4.4 The Publicity Requirement.....	211
5.5 Conclusion	218
6: Aspiration and Concession: Global Corporations and Principles of Global Distributive Justice	221
6.1 Introduction	221
6.2.1 Ideal-Aspirational Theory	226
6.2.2 Corporations and a Property-Owning Democracy: Just Rules	229
6.2.2 Corporations and Just Choices: Cohen's Ethos.....	235
6.3 Conceding to the Facts: The Do No Harm and The All Affected Interests Principles	236
6.3.1 Why Concede?	237
6.3.2 Setting a Basic Limit: The Do No Harm Principle.....	240
6.3.3 Legitimising CSR: The All Affected Interests Principle.....	244
6.4 Concessive Theory in Practice: Five Conditions of the Just Corporation...	248
6.4.1 Condition 1: Pre-Consultative Learning.....	250
6.4.2 Condition 2: Transparency and Disclosure of Information	252
6.4.3 Condition 3: Consultative Forum	255
6.4.4 Condition 4: Evaluation	262
6.4.5 Condition 5: Opportunity for Redress	265
6.4.6 Criticisms and Objections to the Five Conditions.....	269
6.5 Conclusion	272
7: Aspiration vs Concession: a Proposal for the Reform of the UN Global Compact	276
7.1 Introduction	276

7.2 The UN Global Compact: An Experimental Learning Network	279
7.2.1 Governance and Operation	281
7.2.2 The Compact's Advocates	283
7.2.3 The Compact's Critics.....	286
7.3 Ideal-Aspirational Theory: The Global Compact, Just Rules and Just Choices.....	290
7.3.1 The Compact and Just Rules	291
7.3.2 The Compact and Just Choices	294
7.4 Concessive Theory: The Compact and the Five Conditions of Justice	295
7.4.1 Condition 1: Pre-Consultative Learning.....	296
7.4.2 Condition 2: Transparency and Disclosure of Information	301
7.4.3 Condition 3: Consultative Forum	305
7.4.4 Condition 4: Evaluation	309
7.4.5 Condition 5: Opportunity for Redress	312
7.5 Stepping Stone or Concession Too Far?	315
7.5.1 The Long-Haul Argument	315
7.5.2 Redrawing the Parameters of the Debate	317
7.6 Conclusion	319
8: Conclusion	323
8.1 Introduction	323
8.2 Thesis Summary	324
8.2.1 Chapter Summary.....	324
8.3 Wider Implications and Central Contributions.....	329
8.3.1 Reflection on the Theoretical Framework.....	330
8.3.2 Global Political Theory	332
8.3.3 IPE and Global Governance	333
8.3.4 Synergy of the Literature.....	334
8.3.5 CSR	335
8.4 Research Process.....	336
8.5 Agenda for Future Research	338
8.5.1 CSR	339
8.5.2 Global Political Theory	340
8.6 Conclusion	341
Bibliography.....	343
Appendix One	387
Appendix Two	388

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Abstract

This thesis provides a critical interrogation of corporate social responsibility (CSR) and global distributive justice. The central argument of the thesis is that global corporations display profound effects on people's life chances, which should render such corporations subject to principles of global distributive justice. Such principles, it is argued, ought to reflect the complex realities of the political-economic circumstances within which corporations operate. Thus the thesis provides an account of global distributive justice that speaks to both political philosophical attempts to ground discussion of global justice in the extant realities of globalisation, as well to critical accounts of the corporation within the global economy that as yet lack a normative foundation on which proposals for reform can be based. The thesis argues that both statist and cosmopolitan conceptions of justice have neglected the important role corporations play in many unjust circumstances. In an attempt to reconcile the gap that often exists in political philosophy between theory and practice, the thesis discusses two sets of normative standards that it argues ought to apply to corporate activity. The first set, the ideal-aspirational set, draws on Rawlsian ideas to do with property-owning democracy, and argues that a fully just corporation on this reading would set restrictions on corporate size, profit and executive remuneration, as well as requiring a change from concentrated ownership in the hands of a few, to widespread ownership. The second set of ideas, those of concessive theory - to which priority is given - concedes to the facts of global corporations and global capitalism, and addresses both substance and procedure in relation to global distributive justice. In relation to substance, a do no harm principle is suggested as the basic normative minimum standard by which corporate activity should be assessed. In relation to procedure, the application of an all affected interests principle would give those who experience the profound effects of corporations a right to a say in decisions taken that affect their lives. Cutting across these principles are five conditions that would work towards their implementation throughout global corporate activity. These conditions are: pre-consultative learning, transparency and disclosure of information, a consultative forum, evaluation, and the opportunity for redress. The thesis concludes with an assessment of the UN Global Compact and an analysis of the extent to which the Compact meets the ideas of thesis, as well as making recommendations for reform of the Compact on the basis of these ideas.

1: Introduction

This thesis critically interrogates Corporate Social Responsibility (hereinafter CSR) policies from the perspective of global distributive justice. The activities and behaviour of global corporations are of utmost importance to politics, to political philosophy and, more specifically, to the idea of distributive justice. Global corporations shape and determine the sorts of lives that people across the world are able to live, and in many instances, it can be argued, they do this in a problematic or harmful manner. The financial crisis and recession of 2009 is one example of this. It is not difficult to think of other instances – global corporations are central to questions of human rights, labour rights, and the environment. CSR policies are the most common way in which global corporations currently respond to such allegations, separating out their wider societal responsibilities from their commercial role. This thesis provides a critical examination of CSR, using the key argument that global corporations display a profound effect on people's life chances, such that their activities should be subject to principles of global distributive justice.

The idea that corporations have a profound effect on people's life chances is stated and developed throughout the thesis. However, at the outset it is useful to outline in figures the extent and nature of this "profound effect". In 2009, the United Nations Conference on Trade and Development (UNCTAD) reports the following: "there are 82,000 TNCs [transnational corporations] worldwide, with 810,000 foreign affiliates ... exports by foreign affiliates of TNCs are estimated to account for about a third of total world exports of goods and services, and the

number of people employed by them worldwide totalled about 77 million in 2008” (UNCTAD, 2009: 8). The size of such companies is also noted by UNCTAD: between 2006 and 2008 the world’s largest 100 companies “accounted for, on average, 9%, 16% and 11% respectively, of estimated foreign assets, sales and employment of all TNCs.” (Ibid: 10). It is important to note the inescapable political nature of corporations this size; as Anderson and Cavanagh note, by 2000, of the largest 100 economies in the world, 51 were corporations and 49 were states (2000: 3).

Hence this profound effect can be quantitatively expressed; qualitative expressions abound. Amidst widespread and persistent allegations of corporate abuse and denial of human and labour rights, as well as corporate harm to the environment, the financial crisis and recession of 2008/2009 has triggered the idea in the popular mindset that corporations are responsible for inequality and unfairness, manifested in unemployment, loss of income through pensions and savings and public sector bailouts of private sector organisations. Furthermore there is a common perception that this impact is made possible because of the inordinate amount of power that global corporations wield over international organisations, governments, societies, and individuals. It is to such effects that the political philosophical element of the thesis speaks. Corporate activity of this nature is not just a temporary problem requiring a policy-based response. This phenomenon raises significant problems for political philosophy that require a thorough and systematic investigation of how it might be possible to mitigate these profound effects.

Distributive justice is concerned with societal arrangements for assigning basic rights and duties to citizens, and for determining the fair distribution of the benefits and burdens of societal cooperation. There is by no means consensus on the idea of distributive justice. The thesis adds to this area of political philosophy by contending that global corporations should be of concern to questions of justice. Indeed, global corporations present an urgent dilemma for political philosophy, in that it is difficult to see how a fair distribution of benefits and burdens of societal cooperation can be developed without reference to global corporations, such is their impact upon society and the people therein. However, in large part, dominant theories of distributive justice do not explicitly include global corporations within their purview.

Thus the thesis seeks to address this gap by responding to the central research question that asks, what demands could and should a conception of global distributive justice make of global corporations and their CSR policies? The thesis argues that it is the effects that corporations have on people's lives that prompts this as a necessary question to ask. In order to do this the thesis explores the ways in which such claims of justice can be made. Despite many recent attempts to ground the question of justice in political-economic changes related to institutions of global governance and globalised markets, the normative implications of the activities of global corporations remain markedly unexamined by political philosophy. In parallel, international political economy (IPE)-based accounts of global corporations and CSR, while imparting systematic critiques of corporations, have not explored the possibility of developing a normative proposal by which corporate activity could be assessed and reformed. Political

philosophy, in its concern with articulating an “ideal” conception of justice, thus remains largely divorced from extant realities that change the way in which the question of justice ought to be approached and responded to. Similarly, IPE accounts of corporations, while often calling for reform of corporate activity, have not engaged systematically with emergent philosophical ideas of global distributive justice.

Key to developing such a proposal is that the question of justice and corporations cannot be resolved by reference to states or global public institutions of governance alone. The political and economic environment in which corporations operate necessitates a more complex response. This complexity is manifested in the way in which corporate activity impinges upon conceptions of distributive justice that neatly divide into categories of the national and the international, as well as the public and the private. This transgression of boundaries provokes two key concerns for the thesis. On the one hand, the thesis is concerned with the *globality* of global corporations, and argues that state-based theories of distributive justice cannot adequately address the activities of global corporations. On the other hand, the thesis argues that cosmopolitan conceptions of global distributive justice that are addressed to *global public* institutions of governance are incomplete as a result of the lack of attention that is paid to global corporations.

In their “real-world” transgressions of these analytical and normative categories, global corporations problematise most conventional accounts of distributive justice, which set out to address and rectify the central political problem of how

societies should be organised so that it is possible for those living within those societies to live a just life. In the midst of this complexity, the thesis aims to set out a normative proposal that achieves a balance between what is desirable, and what is feasible. This is borne of the contention that the primary use of political philosophy ought to be its application to “real world” circumstances, thus joining theory with practice. The thesis contends that making the link between justice and global corporations is both desirable and necessary, but most importantly, is *possible*, by speaking across disciplinary boundaries in a systematic way.

The contention that global corporations have a real and significant effect on the type and quality of life many people experience infers that such corporations have a scope of responsibility that extends beyond their commercial remit. CSR policies constitute the dominant corporate response to this extension of responsibilities. By making commitments regarding some of the ways in which their activities affect people’s lives (such as in relation to human rights, labour rights, or environmental standards), corporations attempt to manage such effects through a process of self-regulation. Yet CSR is by no means uncontested or uncontestable. Given the fact of its existence, and the nature of the issues addressed, however, CSR warrants attention from political philosophy.

Hence, the central argument of the thesis is as follows. The profound effects that global corporations have on people’s lives renders them subject to principles of global distributive justice. In order to join (political philosophical) theory with (corporate) practice, the thesis extends and develops this contention by addressing the process of CSR, using it as a focal target for developing a

conception of global distributive justice. Understood within a cosmopolitan-liberal frame, the thesis offers a critique and proposal for reform of global corporate activity through the process of CSR as one such conception. The thesis does this by developing a series of proposals, which are applied to a working example of CSR, the UN Global Compact. Briefly, these proposals articulate two ideas. The first, in ideal-aspirational terms, is that a just corporation would be smaller, working from a widespread (rather than concentrated) ownership base, with a fairer redistribution of profits, all proceeding from a base of equality within society. The second proposal concedes to certain facts and, given the stated aim of the thesis to link theory and practice, is afforded more attention by the thesis. This proposal suggests that a conception of global distributive justice ought to concede to the facts of global capitalism and the existence of global corporations, as well as the manner in which the question of corporate responsibility has emerged historically. On this basis, the thesis contends that global corporations should be subject to a do no harm principle, as well as an all-affected interests principle, which are implemented and overseen by reference to five conditions that apply to the process of CSR. These conditions are: pre-consultative learning, transparency and disclosure of information, a consultative forum, evaluation and the opportunity for redress.

The introduction proceeds as follows. The next section establishes the subject area of the thesis and outlines its two central contributions to knowledge. The latter part of the second section sets out the central research question, as well as five sub-questions through which the central question is explored and responded to. The third section of the introduction details the theoretical framework through

which the research questions are answered. The fourth section of the introduction outlines the central argument of the thesis, and provides a qualitative explication of the central claims of the thesis by detailing the various ways in which it is alleged that corporations shape people's lives. The final section outlines the chapter structure of the thesis.

1.1 Subject Area

The thesis is concerned with two subject areas within the broader field of international politics: global political theory and IPE/global governance-based accounts of global corporations. This section of the introduction outlines in broad terms the parameters of these subject areas and articulates the motivations behind the attempt to draw both areas together. It is a central conviction of this thesis that both fields of work are enhanced by dialogue across disciplines, and it is this conviction that represents the foundation for the original contribution to knowledge that the thesis makes. This section first summarises the contributions of the thesis, then details these contributions further, and finally outlines the research questions that the thesis seeks to answer.

On the one hand, the thesis speaks to the emergent branch of political philosophy that is concerned with justice beyond the domestic state. Many different approaches characterise this field of thought – from those that emphasise the centrality of the state or the nation within questions of global justice, such as Miller (2007), Nagel (2005), and Rawls (2001b), to those that adopt a cosmopolitan view, in which the individual is deemed to be the central unit of

moral concern, such as Beitz (1999), Caney (2005b), Pogge (2002; 2008), Nussbaum (2003), O'Neill (2000), and Tan (2004). The thesis argues the first approach overplays the capacity of the domestic state to regulate global corporations, bound as it is by a concept of territoriality; chapter four outlines both normative and empirical reasons as to why this is problematic. The second approach, it is argued, is generally incomplete in that the activities of global corporations are not explicitly addressed; chapter five develops a critique of such conceptions on this basis.

On the other hand, the thesis contributes to the literature within IPE and global governance that is concerned with the role that global corporations and CSR play in contemporary world politics. Private corporations have of course always been a concern of IPE (see for example, Gill and Law 1989; Gill, 2003; Strange, 2003). However, the past decade has seen a growth in the number of IPE specialists who are concerned with the existence of various strands of private authority within global governance, that are involved in the making and development of rules and standards at the global level; global corporations and CSR are part of these strands of authority (for an overview of recent literature in the area, see Ougaard, 2008). Within this broad field as well, there have been numerous urges to rethink normative questions of justice, democracy and equality in the context of the challenges posed by contemporary processes of globalization (see for example Higgott, 2001; Higgott and Devetak, 1999; McGrew, 1997; Murphy, 2000). The chief concern of this literature is that contemporary processes of globalisation dilute and to an extent break down both the real and imagined boundaries that have been set around such normative

questions and thus the manner in which we address such questions requires interrogation. The thesis is located at the intersection of these sets of literature, both of which prompt the question of justice and corporations albeit in different ways. The thesis addresses this by explicitly engaging ideas within analytical political theory that address the applicability of principles of distributive justice to institutions that have a profound effect on people's life chances.

1.1.1 Contributions to Knowledge

The thesis proceeds from the contention that questions of justice cannot be answered solely by reference to binary categories of national and international, or public and private. This position derives from a view of global governance that emphasises the complexity and poly-centric nature of the origin of rules, processes, and social relations that shape and affect people's lives:

[...] it is plain that globalization has significantly affected the mode of governance. In tandem with this reconfiguration of social space, the statist mould of the old has given way to a polycentric framework of regulation. States continue to figure very significantly in this post-statist condition, but they are embedded in multi-scalar and diffuse networks of regulation. Polycentric governance occurs through diverse and often interconnected public and private arrangements on varying scales from local to global. This situation has lacked the clear centre of command and control of the sort the Westphalian sovereign state once provided (Scholte, 2005: 221-222).

Such respatialisation of social relations calls for a reconfiguration of the boundaries within which much social scientific thought is situated. Political philosophical thought about distributive justice, in the manner in which much work proceeds from the assumption of the nation state as the central mode of governance affecting and shaping people's lives, ought not be immune to this. In

this regard, and with reference to the first contribution to knowledge the thesis makes,¹ the work of Rawls is indicative of the ontological assumptions that shape many characterisations of distributive justice. He states:

I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies. The significance of this special case is obvious and needs no explanation. It is natural to conjecture that once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it. With suitable modifications such a theory should provide the key for some of these other discussions. (1999: 7).

In laying out this limitation, Rawls established the nation-state, and more specifically the liberal-democratic state, as the locus of activity and decision-making that is of concern to work on distributive justice. Shaped by a series of institutions, which he characterised as the basic structure of society, Rawls proceeds from the idea that the liberal-democratic state is responsible for the type and quality of life that citizens experience, and the idea that it is to this set of institutions that principles of justice must apply. The basic structure is the overall framework within which Rawlsian thought applies, and while its central characteristic in Rawl's work is that it is a *state*, the basic structure is significant in that it has effects on people's lives that are "*profound and present from the start*" (Ibid my emphasis). In this, the idea of the basic structure articulates the belief that there is an inescapable institutional character to a society that is crucial in determining people's life chances. Individuals have a limited capacity to resist the effect of this structure, and the job of the principles of justice is to shape it so that the profound effects it has are just and fair.

¹ It is important to note that these contributions to knowledge are not listed in order of priority; both are deemed to be of equal value within the thesis.

This limitation to the nation state of principles of justice is more fully critiqued by the thesis in chapter four, which outlines normative and empirical reasons for why this limitation is so problematic. Broadly, it is argued that states do not constitute the only form of political organisation through which questions of justice arise and can be responded to. An IPE-based account of globalisation tells against the desirability of this limitation in the way in which it highlights the ongoing, intensified development and articulation of norms, rules and standards at the global level that shape people's lives to a significant extent. CSR is one example of how this happens.

Following on from this, the thesis also makes a contribution to *cosmopolitan* conceptions of global distributive justice, in the manner in which it draws attention to the important role global corporations have to play in the type and quality of life that people experience. Cosmopolitan thought has its lineage in the work of Kant ({1795} in Reiss and Nisbet 1991) and has always articulated the importance of the universal in questions of ethics and justice. However, in the latter half of the twentieth century, analytical political philosophy predominantly treated questions of justice as coterminous with the part the state has to play in determining the type and quality of life people experience, hence the vast amount of attention and thought that has gone into Rawlsian-influenced conceptions of distributive justice. However, towards the end of the twentieth century, cosmopolitan thought began to regain ground within the field, as a response to contemporary processes of globalisation and concomitant doubts about both the empirical suitability, as well as the normative desirability, of the continued use of

the state as the central locus of concern within questions of justice. In this regard, cosmopolitans have approached various questions, from the broader normative ones of justice and democracy (for example Caney, 2005b; Held, 1995; McGrew, 2002; Pogge, 2002 and 2008; Tan, 2004;) to more specifically applied questions of global finance (Brassett, 2009), institutions of global governance (Best, 2006), or global civil society (Kaldor, 2001; Scholte, 2001) to name but a few.

While both approaches mentioned above deal with social, political and economic relations beyond the domestic state, the question of the normative demands that can be made of global corporations has not been systematically dealt with. As such the thesis makes a contribution to this literature by drawing together both cosmopolitan as well as some state-based ideas about distributive justice, with literature from IPE and global governance that addresses global corporations, private authority and CSR. Chapter five develops a more extensive critique of existing cosmopolitan conceptions of distributive justice in this vein of thought.

The second contribution to knowledge that the thesis makes is to link the normative questions of justice into the IPE and global governance literature. As mentioned above, there have been moves in this direction in recent years, to bring to attention the necessity of developing an ethical response to globalisation. In this regard, what tends to be emphasised is the changing nature of the domain within which questions of justice ought to be addressed, with the sphere of concern for justice being recharacterised variously as the “global public domain” (Ruggie, 2004), the “global polity” (Ougaard and Higgott, 2002), or the “global basic structure” (Buchanan, 2000). The thesis takes these calls for a normative

assessment of contemporary globalisation as an invitation to connect research that emphasises the key role that forms of private authority, such as global corporations, play within contemporary world politics, with political theory.

The involvement of global corporations, and other forms of private authority, within structures of global governance is neither unitary nor linear. Some have written about global corporations and the manner in which they are able to influence global governance arrangements and the different ways in which they exercise this power (for example, Fuchs 2007; May, 2006). Others have assessed global corporations in terms of the way in which they cooperate amongst themselves in order to pursue economic and political goals (for example Graz and Noelke, 2008), as well as with autonomous political organisations (for example, Cutler, Haufler and Porter, 1999), or alternatively, with other private actors (Pattberg, 2007). Some literature has emphasised the way in which corporations are contributors to regulation in what are traditionally thought to be “public sector” areas (Haufler, 2001). Other work has emphasised the role that private sector actors play in particular subject areas, for instance, the environment (for example, Falkner 2008; Newell, 2000; Newell and Levy, 2004 and 2006;), development (Bull and McNeill, 2007) or information technology (Haufler, 2001).

Within and amongst this literature is the phenomenon of CSR. Further characterisation of CSR is developed in chapters two and three. For the purposes of this section, however, it is necessary to indicate the reasoning behind the selection of CSR as a focus for the normative question of global distributive

justice. CSR policies are generally the manner in which global corporations deal with what they deem to be their responsibilities to society beyond their remit as commercial entities. One way in which they do this is in participation in the above-mentioned structures of global governance, in partnership with various other private actors, or states, or international organizations. Of course, some CSR policies are developed by corporations on their own, but for the large part they make at least some reference to an external organization, or to externally determined standards. In general, CSR policies address matters such as human rights, labour rights, environmental standards and social standards. Thus the thesis contends that it is within such policies that the normative demands that justice could make of global corporations ought to be developed.

The way in which the thesis contributes to the above mentioned literature on private authority within global governance is by attempting to open up this area of work to normative critique through a systematic engagement with the philosophical idea of distributive justice. The central argument, developed and expanded upon in the fourth section of the introduction and throughout the thesis, is that global corporations are responsible for exerting profound effects on people's life chances, such that they ought to be subject to principles of global distributive justice. In order to do this, the thesis opens up the process of CSR to normative scrutiny and ultimately makes suggestions for how it could be reformed with a conception of justice at its core. The various problems that many authors have argued are associated with CSR have included issues such as accountability (Newell, 2005), the non-negotiability of values within standard CSR approaches (Blowfield, 2005a), the use of the concept of citizenship in

relation to corporations (Crane, Matten and Moon, 2008), as well as the privatisation of CSR norms involved in the process (Cutler, 2006). The political-philosophical inspired response of the thesis to such concerns about CSR is that the activities and behaviour of global corporations and their CSR render them subject to a conception of global distributive justice that incorporates such activities. Thus the thesis identifies a gap in the literature in relation to global justice and the activities of global corporations, as well as a gap in the literature on private corporations and CSR in relation to the normative demands that ought to be made of global corporations. In bringing these two sets of literature together, the thesis develops two sets of proposals that place the issue of distributive justice at the core of corporate activity and applies these ideas to the UN Global Compact, as a working example of CSR.

1.1.2 Research Questions

The central argument of the thesis is pitched at the above mentioned gaps in the literature to do with global distributive justice and IPE-global governance based accounts of global corporations. By making the case that global corporations display profound effects on people's life chances, the thesis proposes the development of a conception of global distributive justice that can mitigate these effects by addressing the process of CSR. Thus the thesis poses a central research question that is of necessity inter-disciplinary and that seeks to avoid the limitations of existing literature, as outlined above.

Hence the thesis addresses and responds to the following central research question:

- In the context of contemporary intensified processes of globalisation, what demands can and should a conception of global distributive justice make of global corporations and their CSR policies?

The thesis proceeds on the basis that an adequate response to this question is not to be found in a state-based approach to justice, nor is one to be found by addressing only global public institutions of governance. The matter of justice and corporations elicits a more complex response that reflects the poly-centric framework of governance within which corporations operate. Addressing this empirical reality is a key concern for the thesis. However, so too is the demand for a normative proposal that sets out what justice in relation to corporations requires. Therefore, the thesis addresses a series of sub-questions that reflect the complexity within which corporations operate, the need to rethink conventional accounts of justice prompted by this, as well as the need for a normatively demanding set of requirements. Hence, the sub-questions addressed are:

- In what ways are the history and emergence of CSR important from the perspective of global distributive justice?
- How, if at all, can the application of principles of global distributive justice to global corporations be justified?
- In ideal circumstances, as well as in aspirational terms, what demands should a conception of global distributive justice make of global corporations and CSR?
- In non-ideal circumstances, conceding to the currently prevailing facts of

global capitalism and global corporations, what demands should a conception of global distributive justice make of global corporations and CSR?

- How do these concessive ideas relate to a working example of CSR, the UN Global Compact?

By addressing these research questions, the thesis seeks to extend and develop the idea that corporations ought to be subject to principles of justice in a hitherto unexplored way – that is by connecting two diverse sets of literature. These research questions pay attention to the actors and structures of global governance that shape people's lives, while also paying attention to the normative ideals of justice.

1.2 Theoretical Framework

The purpose of the theoretical framework is to establish the lens through which the research questions are understood and answers are approached. In laying out the philosophical underpinnings of the thesis, the theoretical framework makes clear the ontological and epistemological assumptions of the work. The thesis is broadly cosmopolitan-liberal in its outlook. This section of the introduction attempts to flesh out the implications of this outlook for the manner in which the argument of the thesis has been made.

1.2.1 Cosmopolitan Suffering

Cosmopolitanism is not new – this set of ideas has existed since ancient Greece

(Vertovec & Cohen, 2002: 5). In more recent times, cosmopolitanism has experienced a resurgence in academic interest, prompted in large part because of the growing acceptance of the impact that contemporary globalizing processes have on the study of international politics. In chapter five, the manner in which contemporary cosmopolitans have discussed specifically questions of global justice is discussed in greater detail. In this section of the introduction, however, cosmopolitanism is introduced as a partial theoretical frame for the argument being made in the thesis.

As a starting premise, the cosmopolitan perspective of the thesis is manifest in the fundamental assertion that the territorially bound nation state is not the sole locus of human and political organization in which people's lives are determined, played out and shaped. Cosmopolitanism, from this point of view, allows for the adoption of a methodological and theoretical frame from which to approach questions of justice. As a starting point, cosmopolitanism focuses our concern on the universal questions of justice and ethics as just that – *universal*, with a central idea being that such questions pertain to all of humanity at any one time. This is not to argue that cosmopolitanism would prompt universal (or common) answers to such questions, but to assert that an appropriate starting-point for our scope of concern in thought about such questions is that there is an inescapable universality therein.

As such, the thesis asserts that questions of justice are not always and only particular to one state, nation or country, thus the parameters of thought about justice ought not *always* be designed to align with parochial or territorial

boundaries. It is important to be clear here about the conception of cosmopolitanism being adopted here. An extreme version of this view would argue that there are no questions of justice that arise only in particular states. It is not necessary here to adopt such a view. Instead the thesis proceeds from the more modest cosmopolitan position that justice, in certain cases, can be a question for the state, but the state is not the *only* form of institution within which questions of justice arise. Global corporations are one manifestation of this claim. Thus the framework of cosmopolitanism opens up the question of justice beyond the territorial boundaries of the state, eliciting a response to certain questions of justice that are not particular to one state.

This leads to the question of what we are responding to when these questions of justice allegedly arise. If justice is not always about responding to, say, the rights of citizens within a particular state, then what is it about? In a sense, if we conceive of justice as being a solely state bound idea, then the answer can be simplified to an extent. Of course, political philosophy has produced many different answers to questions of this nature – Rawls argued that justice is about the distribution of primary goods (1999); Dworkin argues that justice is about the distribution of resources (2002); Sen and Nussbaum argue that justice is about the distribution of capabilities (Sen, 1999; Nussbaum, 2000); Nozick argued that justice is about the distribution of property rights (1974). Thus, debates about distributive justice have largely centred on whether such distribution should be, say, egalitarian, utilitarian, or libertarian. The simplification, mentioned above, is that such debates (with exceptions) have been conducted on the assumption that justice is a question that can be satisfactorily responded to within the real and

abstract boundaries of the nation-state. More particularly, justice in most of the above paradigms has been discussed in relation to a liberal democratic state; the exception here is the capabilities approach, developed by Sen and Nussbaum, which has informed Nussbaum's conception of global justice (2003), as well as influencing notions of development. As well as this, others such as Caney (2005b) and Beitz (1999) have articulated globalised versions of egalitarianism (this is discussed further in chapter five) and Pogge (2002 and 2008) has deliberately made his conception of global justice appealing to libertarians,

Overall, however, the thesis argues that in relation to justice and corporations, the cosmopolitan concern with the mitigation of suffering offers scope for responding to the question of *what* justice requires us to be concerned with. For many cosmopolitans, this concern is what unites cosmopolitanism as a paradigm (see for example Brassett and Bulley, 2007; Linklater, 2007). Such authors emphasise the relationship between this account of cosmopolitanism with post-structuralism and discourse ethics; in this latter regard of course the pursuit of a definitive conception of distributive justice in relation to corporations is an anathema. However, the thesis contends that this does not rule out the applicability of justice as the mitigation of suffering to the question at hand. The point about suffering is that it is universal and inescapable, and it is hard to disagree with the contention that at a basic level, the mitigation of suffering and the protection of inevitable human vulnerability ought to be the most urgent demand of justice. Of course, suffering is not defined and experienced in the same way across cultures – but forms of suffering are an unavoidable part of the human experience. In relation to corporations, this is appealing, because

conceptions of justice that have been developed within the framework of a (liberal-democratic) state are not easily translatable in circumstances of injustice that are not solely defined by the territorial boundaries of the state and the public sphere, as is the case with global corporations.

An obvious objection to this view is that if justice is merely about the mitigation of suffering, then surely an adequate response is one of humanitarianism. Indeed, Nagel infers such an idea in his discussion of global justice (2005). This position would argue that if all that is required by global justice is the mitigation of suffering, then humanitarian responses, as and when necessary, sufficiently deal with such instances of injustice. Thus if global justice requirements are restricted to a minimalist idea about mitigating suffering, then a minimalist response will follow. The thesis does not agree with this position. Humanitarian responses to justice constitute discretionary and sporadic actions that do not address the ongoing systematic harm that is deemed to be unjust. Pogge (2008) makes a similar argument when he alleges that the global order is responsible for causing harm to those who live in severe poverty, which he argues triggers a negative duty not to participate in such an order. Chapter six appeals to this idea, in its argument that global corporations, at a very basic minimum are required not to cause harm. As part of a discussion of the theoretical framework, however, the thesis contends that the cosmopolitan-based notion of justice as the mitigation of suffering simplifies, but also makes *urgent*, the question of justice in relation to corporations.

1.2.2 The Liberal Basic Structure

The allegation of systematic harm in relation to global corporations links to the liberal aspect of the theoretical framework. The idea that there exists an institutional set-up that inescapably impacts upon people's lives alludes to the Rawlsian (and thus liberal) idea of the basic structure. As mentioned above, the thesis contests the restriction to the state that Rawls set on the basic structure, but the thesis agrees with the Rawlsian-liberal idea that people's lives are unavoidably shaped by an institutional set-up and that it is to this set-up that justice applies. Rawls contends that the basic structure shapes the sort of lives people experience, as well as shaping their expectations and hopes about their lives (2005: 269). In this sense, the thesis takes the question of justice to be fundamentally *political*, in the sense of there being a scheme of politically determined institutions through which lives are to an important extent shaped – and through which there is the *potential for mitigation* of the above mentioned universal suffering.

The inclusion of global corporations within the basic structure would have been ruled out by Rawls; for him “Justice as fairness is a political, not a general, conception of justice: it applies first to the basic structure and sees these other questions of local justice and also questions of global justice (what I call the law of peoples) as calling for separate consideration on their merits” (2001a: 11). Of course, Rawls's conception of justice would call for the regulation of corporate activity, but in two importantly different ways – his conception would only regulate such activity within a state, and he would see corporations not as part of the basic structure, but as private organisations that are not subject to principles of distributive justice. However, the thesis contends that if the basic structure is

defined as a set of institutions that has effects on people's lives that are "profound and present from the start" – and contemporary global political life is constituted by a complex network of a variety of actors who are involved in the determination of sets of global rules and standards that directly impact people's lives – it would seem unjust to omit those networks of actors and sets of rules because of the lack of a clear institutional structure (like the nation-state) to which they belong.

This is the essential point at which the theoretical framework adopted by the thesis is at once cosmopolitan and liberal – the priority is the (in)justice of numerous different circumstances, and this trumps any priority given to forms of political organisation that restrict the scope of concern of justice to, say, citizens, or co-nationals. This framework informs the ultimate suggestions of the thesis. From the cosmopolitan conception of justice as the mitigation of suffering comes the proposal that corporations ought to be subject to a do no harm principle. From the liberal idea of the basic structure that unavoidably shapes people's lives comes the recommendation of the adoption of an all-affected interests principle, which affords people an opportunity to participate in CSR processes and corporate activity that affects them. As such, the theoretical framework adopted here proceeds from the contention that suffering is an urgent concern of justice, that must exist and emanate from *somewhere*; at the same time, attempts to alleviate suffering, or realize justice, must also apply to something or somewhere.

The link the thesis makes between the universality of cosmopolitan concerns and

the limitation of the scope of concern to some form of basic structure points towards another important framing of the thesis – that of the boundary it seeks to dilute that exists between theory and practice. Much recent work on global distributive justice is largely theoretical and non-applied in focus (for example, Beitz, 1999; Caney, 2005b; Fraser, 2008; in part, Pogge, 2008). The thesis acknowledges this work as of signatory importance. However, the focus of this thesis is on how such theory intersects with practice, and it is at this intersection where the original contribution of the work is developed. In the view of this thesis, much of this theoretical work has imposed limitations on the question of global justice because of a reliance on the idea that justice must necessarily be thought about in relation to a definitive separation of the national and the international, as well as an equally definitive separation of public and private sectors. What this thesis contends is that the ultimate usefulness of theory lies in its ability help us understand and explain the “real world”, as well as make normative suggestions for the “real world”. This thesis identifies global corporations as warranting attention from the perspective of justice and in doing so, applies theory to practice in a way that does not rely on the aforementioned definitive separations.

In summary then, the thesis approaches the central research question, as well as the sub-questions, using a cosmopolitan-liberal theoretical framework. The thesis takes as its starting point the cosmopolitan assumption of the universality of human suffering as the chief concern for questions of justice; thus justice is necessarily approached from a global perspective. Intertwined with this framework of thought is a liberal approach to the manner in which this suffering

is channeled and mitigated – through a basic structure of political institutions that display profound effects on people’s life chances.

1.3 Research Activities

As mentioned in the previous section, an important part of the approach this thesis has taken is the consistent effort to connect theory with practise. At the root of this approach is the belief that a primary value of theory is the manner in which it aids us to understand “real-world” phenomena, but also the manner in which it allows us to think beyond the limits of current circumstances in order to make normative recommendations for such real-world phenomena.

The central contributions of the thesis were established through extensive use and scrutiny of the broad array of literature that exists pertaining to distributive justice, on the one hand, and global corporations and CSR, on the other. To this end, the thesis has undertaken a large amount of textual analysis related to global corporations and CSR. This has involved the use of documents, reports and websites that provide information and analysis of CSR; the specific focus in the final chapter of the thesis, on the UN Global Compact, necessitated the use and consultation of many UN documents and website. As detailed elsewhere in the introduction, the thesis views the emergence of CSR as a neo-Polanyian type response to the globalisation of neoliberal economic policies. As such, it was necessary to make use of much literature within the field of international political economy in order to develop a coherent theoretical explanation of the emergence of CSR. Chapters two, three and partially chapters six and seven are the product

of this analysis.

Parallel to the extensive use of this type of literature is the use of political theory literature on distributive justice, both of the global and domestic in orientation. The starting point for this analysis of literature was the necessity of establishing the primary ways in which the question of global justice has been rejected, on the one hand, and accepted, on the other. Chapters four and five are the product of this analysis. Chapters six and seven elaborate this analysis further, but importantly these chapters establish the intersections between the two types of literature analysed in the thesis. As detailed in chapter six, the Polanyian and Gramscian insights developed in chapter three inform the recommendations of concessive theory.

The intersection between these literatures is a key link to the wider contributions of the thesis, and establishing and developing this intersection was a central challenge of the research process. What the analysis argues is that while the emergence of CSR and the form it has taken is unavoidably shaped by processes of global capitalism (as per the Polanyian and Gramscian insights), it is the task of a conception of distributive justice (in a concessive sense) to set out principles that reflect not just this reality, but also to reflect that justice makes demands that are of a high normative standard. Thus this element of the research process necessitated the achievement of a balance between the constraints of what is *known* (about global corporations and about CSR), and the possibilities of what *ought to be*. Infused in this attempt to achieve a balance were the perceived constraints imposed by the very disciplinary boundaries that the thesis sought to

overcome. As such, while much political philosophy articulates the need for some form of “global justice” the thought that global corporations require a differentiated account would be deemed unnecessary by many, the assumption being that a state-based, or a global public-based response would be adequate. Likewise, accounts of CSR that concentrate on it as a technical question of efficiency (as opposed to a *contestable* question of justice) mitigate against the application of stringent normative proposals for its reform.

By addressing both broad sets of literature, the thesis worked to overcome these disciplinary constraints by proceeding from the conviction that a response to the question of justice and corporations was both necessary and possible. The sheer breadth of the literature involved posed a challenge and to certain extent the research process had to be restricted in a number of particular ways – in the particular conceptions of justice that are critiqued and addressed, and in the empirical application of the argument. This challenge is reflected on more fully in the thesis conclusion, where the possibility for future research afforded by such restrictions is addressed. However, what this research process afforded the thesis was the opportunity to show that speaking across disciplinary boundaries is desirable and possible, whatever the inherent restrictions of the process.

1.4 Central Thesis

1.4.1 Central Argument

The central argument of the thesis is that, due to the manner in which global corporations display a profound effect on people’s life chances, they ought to be

subject to principles of global distributive justice. This contention is expanded and developed by arguing that a way of responding to these profound effects is through a critique and revision of global corporate activity within the process of CSR. Elaborated through the research questions outlined above, the thesis offers two proposals that could mitigate these profound effects. In ideal circumstances, it is argued that justice would require the reform of global corporate activity following some of the ideals espoused by Rawls's idea of a property-owning democracy (delinked from the state-centric ontology of its incarnation). Were global corporations to exist within a property-owning democracy, it is argued that they would be required to be a lot smaller, with a fairer redistribution of profits, against a background of base equality. The thesis argues that such requirements would have implications for corporate taxation, capital mobility, and executive remuneration.

In non-ideal circumstances however, to which the thesis pays greater attention, the facts of global capitalism and global corporations must be conceded, as it is these concrete realities with which a conception of global distributive justice must contend. The thesis proposes the application of a do no harm principle, as well as an all affected interests principle, as a suitable response to circumstances that provoke questions of justice. The do no harm principle forms a basic minimum normative standard, the purpose of which is to set a substantive limit on corporate activity. The all affected interests principle relates to procedure, and its purpose is to afford a degree of legitimacy to the process of CSR, proceeding from the basic idea that in circumstances where an institution has a profound effect on people's life chances, those people have a right to a say in the decisions

such an institution takes. The purpose of this section is to elaborate on the circumstances that have provoked the research questions. Whereas the above sections detailed the gaps within the literature that the thesis seeks to fill, this section brings depth and meaning to the contention that global corporations warrant attention from the point of view of justice. As such, this section offers a broad overview of these “profound effects” that form the basis of the thesis argument.

1.4.2 Profound Effects

The late twentieth and early twenty-first centuries saw the emergence of a widespread popular perception that large global corporations are responsible for most, if not all, of the negativities associated with globalisation. Some such critiques have pointed to a connection between expanded corporate power and the deterioration of democratic institutions, at both the national (see for example, Monbiot, 2000; Nace, 2003) and regional levels (see for example Balanya et al, 2000). Others have documented citizen responses to such developments, such as the “anti-globalisation” protests of the late 1990s, in a “call-to-arms” fashion (for example Danaher and Mark, 2003). Some authors have targeted specific issue areas that corporations are said to have had a detrimental impact upon. For instance, Schlosser (2002) attacked the global food industry; Klein (2000), attacked the branding policies of global corporations, arguing that they were responsible for a loss of cultural diversity across the globe. Korten (2001) argues that corporations are responsible for causing much of the world’s poverty and inequality. Perhaps most damningly, the film and book produced by Bakan (2003 and 2005, respectively), argued that the activities and nature of corporations are

akin to the behaviour of a human psychopath. Consolidated by “anti-globalisation” protests across the world in the late 1990s and early 2000s, the idea that corporate power is something that is of concern to the general public is not an unusual one. In more recent times, such ideas have been given greater weight by the association of large financial corporations with the financial crises of 2008/2009.

The argument that corporations have an undue effect on people’s lives has existed in relation to developing countries and global poverty for some time (for instance see the examples given below about tax avoidance). However, more recently, a popular sentiment has emerged that global corporations have had a direct impact upon people’s lives in the industrialised developed countries of Europe and North America, in terms of income and wealth from shares, pensions and savings, as well as in terms of job security and inevitable redundancy in difficult economic circumstances. Recent financial crises have emphasised the idea in many Western societies that corporations wield a great deal of power over people’s lives; this power is increasingly coming under popular scrutiny. Importantly, events of 2008 and 2009 have seemed to emphasise in the popular imagination that global corporate power is a question that requires a normative response.

These general claims by the above mentioned authors require further specification, if the central thesis of “profound effects” is to be acceptable in order to then make the required argument from political philosophy. Thus the remainder of this section will provide detail in this regard.

A common category of allegations made against corporations is that of the abuse of human rights. Perhaps one of the most high profile cases of recent years in this regard is that of Ken Saro Wiwa and Shell in Nigeria. Saro Wiwa, and the “Ogoni 9” led protests against the installation of a Shell pipeline in the Ogoni region of Nigeria in the early 90s; Saro Wiwa and the rest of the group were hanged by the military government, and since then Shell has been dogged by allegations that the corporation was complicit in their deaths by having provided funding and resources to the government to kill them. In June 2009, the case brought to a New York federal court alleging human rights violations on the part of Shell was settled out of court, with the corporation agreeing to pay \$15.5m in compensation to the Ogoni people (Pilkington: 2009). Other common allegations in this regard that have been made surrounding the use of child labour in the manufacture of say, clothes bound for Western stores (Oneworld.net, 2008), torture and sexual abuse by private military companies (Amnesty International, nd), and the denial of freedom of association to corporate employees in both the US and beyond (Human Rights Watch, 2007; ILRF, nd).

There are numerous further allegations of corporate human rights abuses, from those that have been pursued in U.S courts – the Centre for Constitutional Rights cites at least six examples of cases they have taken to court (CCR, 2009) – to the compiling of lists of some of the “most wanted” corporate criminals (Global Exchange, 2009). Increasingly, such cases are being pursued legally, lending the allegations strength and seriousness – with the role played by large NGOs such as Amnesty International and Human Rights Watch, who are recognised formally

by some international organizations, affording such campaigns both popular and political legitimacy.

Related to allegations of human rights abuses are allegations of corporate (mis)use of natural resources. The main culprits in this category are oil, mining, logging and mineral exploitation corporations, with conflict breaking out over hydroelectric dams, biofuel plantations as well as coal, copper, gold and bauxite mines (Vidal, 2009). Central arguments of these sorts of allegations are that global corporations are involved in activities that will lead to the eventual extinction of indigenous peoples, as well environmental degradation and loss of biodiversity. As well as this there are many allegations that mineral and extraction corporations are implicit in many conflicts that lead to human rights abuses (see for example War on Want 2007, or Human Rights Watch, 2009). In many of these cases it is alleged that the state is also complicit in these abuses, supporting the activities of the corporation, rather than those of its citizens (Vidal, 2009).

There are also frequent allegations made that corporations are responsible for covering up scandals in which they have been responsible for injustice. Recent examples in this regard include the Trafigura scandal in the UK, in which the corporation tried to cover up its responsibility for the illegal dumping of waste and the consequent ill-health of those who came into contact with it in the Ivory Coast, as well tried to hamper reporting of this by the press (see The Guardian, 2009b). Cover-up was proven in the Enron scandal of the early 2000s, with allegations of auditors destroying evidence and shredding documents (see,

among many, Eichenwald, 2002; Fox, 2003).

An element of these sorts of allegations is that corporations are able to behave in this way because they are able to take advantage of globalising circumstances in ways that governments are not. As such, for example, corporations can exert their rights to extract resources and use land for profit, which in turn trumps the rights of indigenous peoples. Furthermore, corporations can use the practice of global outsourcing to derogate responsibility for the protection of employee's labour rights. It is also alleged that many corporations are able to make the best of globalisation by paying employees in developing countries far less than they would be paid in developed countries – see, for example, recent allegations that Tesco is complicit in workers' poverty by paying its South African employees less than a living wage (War on Want, 2009a). Related to this are also the advantages corporations can gain from particular technical strategies such as exploiting tax loopholes, transfer pricing and tax havens for their commercial gain. In this regard, War on Want describes transfer pricing as having enabled companies to charge themselves over £4,000 for a ballpoint pen and under £1 for an entire prefabricated building in order to dodge the tax they owe (War on Want, 2009b). Explicit links are often made between tax avoidance, and poverty and development goals, with the Tax Justice Network arguing that if corporations were taxed properly, the achievement of the Millennium Development Goals would be a lot easier (2009). Beyond the matter of global poverty, one UK newspaper's recent series of investigations into the tax avoidance strategies of over 100 UK firms highlights the wider societal implications of corporate tax avoidance, arguing that corporations rely on the

state for their basic functioning and as such it is incumbent upon them to obey tax laws (The Guardian, 2009a).

Another common perception of corporations is the inequality generated by their profit levels and the consequent unfairness of this. The perception in this regard is that corporations are involved in unfair arrangements regarding profit and pay, and that these arrangements are an indication of levels of inequality associated with injustice. Evidence suggests that a large gap has emerged between top wage earners and average wage earners; one study indicates that, in the US at least, in the period 2002-2006 the top 1 percent of wage earners gained $\frac{3}{4}$ of all income growth, something that is attributed to an “explosion in top wages and salaries” (Saez, 2008: 2-3). Particularly in recent times, there is a perception that large global corporations are responsible for this inequality, and increasingly it is being objected to not just by the general public, but also by shareholders. An example of this is the refusal on the part of shareholders to approve the Shell directors’ remuneration report in 2009 (Webb: 2009). Of course corporations cannot be entirely blamed for all inequality in wages. However the recent general concern that has emerged about executive remuneration indicates that corporations do play a significant role in wage inequality. Compounding these types of facts are the widespread links that have been made between the culture of generous executive remuneration and bonuses, and the global financial crisis of 2008/9 – for instance, the US President appointed “pay tsar”, who cited executive pay as a contributing factor to the crisis (BBC, June 10 2009).

The common response of corporations to such allegations is either the

development of a CSR policy, or reference to and potential reform of such a policy. Indeed it has recently been argued by some ethical campaigners that it is the corporations that *do not* have a prominent CSR policy that we ought to be most concerned with, with corporations such as Gap and Nike having responded to and reformed as a result of much-vaunted allegations of malpractice (Rosselson, 2009). This thesis argues that the above described stories and reports are instances of the profound effects that corporations have on people's life chances, and that this is sufficient to consequently argue that corporations should be subject to principles of global distributive justice. The range of instances is quite broad, from the allegations of outright harm, to more complex instances of perceived unfairness and inequality. These allegations could potentially elicit a number of different responses. Some might say it is the role of the state to regulate corporations more stringently; others would say that corporations are best left to regulate themselves and to be relied upon to make ethical and just decisions. The thesis argues that current circumstances demand a different sort of response and that such a response can partially be found with the political philosophical ideal of distributive justice.

1.5 Chapter Structure

Chapter two begins by detailing what defines global corporations, and then goes on to present an historical overview of the emergence of CSR policies, as well as setting out the nature and characteristics of these policies. The historical periodisation is chosen to represent the wider political and economic context within which the role of the corporation sits. The first period is pre-1945, and

was one that was in the main characterized by instances of corporate philanthropy. The second historical period is 1945 – late 1980s, years that were somewhat shaped by attempts at establishing some form of international regulation of global corporations. The chapter describes some of the failed attempts at doing this, as well as detailing the emergence of multilateral codes for corporations that still exist. The third historical period is the late 1980s to the present, which has been characterised mainly by the lean towards the self-regulation of corporations, through various codes of conduct. The chapter then moves on to set out a characterization of CSR. The chapter describes CSR in terms of its agents, the content of the policies, as well as the procedures used to practise CSR.

Chapter three develops a theoretical explanation for the emergence of CSR. This chapter further consolidates one of the two subject areas of the thesis, that of international political economy. The chapter sets out the main ideas of embedded liberalism and the Polanyian double movement and contends that insights from Polanyi's work can explain why CSR emerged, or more generally, why the question of the social responsibility of global corporations emerged when it did. The contention here is that CSR is a *response* to Polanyian-type resistance to neoliberalism, manifested in the growth of a global civil society movement and the financial crises of the late 1990s. The chapter also details a neo-Gramscian perspective on the emergence of CSR, which interprets global corporations and their CSR policies as an aspect of a capitalist regime of accumulation. The chapter contends that such ideas are useful in explaining why CSR takes the form it does by highlighting the manner in which CSR processes are shaped and

determined in large part by the hegemonic bloc of global capitalism. These ideas are important in influencing the recommendations of the thesis in relation to the reform of CSR.

Chapter four sets up the argument within political theory literature by detailing some of the main state-based theories of justice that exist within the literature. The chapter critically examines three justifications given for the restriction of distributive justice to the nation state. These three justifications are citizenship, which critiques primarily Rawls's work (1999, 2001a, 2001b, 2005); national self-determination, which relates primarily to the work of Miller (1995, 2007); and sovereignty, which relates to the work of Nagel (2005). The chapter presents both normative and empirical reasons why such conceptions of distributive justice are insufficient to contend with the challenge posed by contemporary processes of globalisation, of which global corporations are part.

Chapter five develops the political theory element of the argument further by outlining and critiquing cosmopolitan conceptions of global distributive justice. This chapter seeks to highlight a gap that exists within cosmopolitan political theory regarding the important role that global corporations play. Thus chapter five first sets out a loose characterisation of what cosmopolitanism is, dividing it into four (often overlapping) categories of methodological, moral, political and legal cosmopolitanism. The chapter then moves to discuss some of the justifications for, and principles of global distributive justice that have been articulated by cosmopolitan writers. The general claim here is that such conceptions are incomplete in the manner in which they largely focus on the

applicability of principles of justice to global *public* institutions of governance. The chapter then moves to make a key argument – that in order for justice to apply, it is enough that an institution displays profound effects on people’s life chances. The thesis draws on a debate between Rawls and Cohen (Cohen, 1997, 2002, 2008) to do with the make up of the basic structure and the requirements of justice, as well as Williams’s (1998) contribution to that debate in relation to publicity and justice. On the basis of this debate, it is argued that global corporations and their CSR policies fit this conception.

Chapter six sets out the principles of global distributive justice that this thesis argues are suitable for application to global corporations. The chapter is divided into two central ideas, first that there is an ideal-aspirational aspect to the argument, and second, that part of the argument needs to concede to certain facts, thus a concessive part of the argument. In the ideal-aspirational terms, ideas about the Rawlsian property-owning democracy are explored in relation to corporations, with the conjecture being made that the Rawlsian ideal in this instance would set limitations on the size of corporations, as well as changes to the ownership of corporations so that there is widespread rather than concentrated ownership. As well as this, it is argued that such requirements would necessitate wider and fairer redistribution of corporate profits, all proceeding from a base level of equality within a property-owning democracy. The chapter also extrapolates from Cohen’s ideas about justice, which argue that justice would require not only just rules, but also just individual choices within those rules, such that an *ethos* of justice prevails. The chapter then focuses on what is called concessive theory, which attempts to suggest what justice in

relation to corporations would require once certain facts have been conceded. In this vein of thought, it is argued that an appropriate principle to apply to corporations (once the fact of global capitalism and the existence of global corporations as they are is conceded to) is the Do No Harm Principle, as well as an All-Affected Interests Principle (AAIP). The rationale behind this is to offer a basic normative minimum standard for corporate activity, as well as a normative principle that would afford people who are affected by that activity to have a say in it. The chapter discusses both these principles, but the central focus is on the AAIP. The chapter sets out five conditions through which these principles could be met within the process of CSR. These conditions are: pre-consultative learning, transparency and disclosure of information, a consultative forum, evaluation mechanisms, and the opportunity for redress. The chapter briefly addresses concerns and objections to the views articulated, which in the main are to do with the balance between concession and aspiration.

Chapter seven is about applying the theoretical arguments of the thesis to a working example of CSR, the UN Global Compact. The Compact is a UN initiative, which primarily encompasses a code of conduct to which global corporations, as well as small to medium enterprises, can voluntarily sign up to. There are ten principles within the code that relate to human rights, labour rights, environmental standards and anti-corruption measures. The chapter begins with a brief overview of the work of the Compact, as well as summary of the main arguments in favour and against the Compact since it began in 2000. The chapter then moves to apply the ideal-aspirational ideas articulated in chapter six to the work of the Compact, and asserts that inasmuch as these ideas would place

restrictions on the size of corporations, on the level of profit and remuneration generated, as well as the requirement that corporations would exist within a system that ensures background justice, the Compact does not come close to meeting such ideals. The chapter then moves to a more focused analysis of the Compact, drawing from the concessive theory articulated in chapter six. The chapter assesses the extent to which the Compact meets the five conditions of the principles, and provides recommendations as to how the Compact might be reformed in order to meet such conditions. The chapter concludes with a discussion of whether it is better, from the point of view of justice, to view the Compact as a necessary stepping stone in the right direction, or whether the Compact is in fact a concession too far and that justice requires holding out for more ideal arrangements.

1.6 Conclusion

This chapter has introduced the central arguments and contributions of the thesis. The introduction outlined the main subject areas to which the thesis makes a contribution – those of global political theory, and IPE/global governance-based literature on global corporations and private authority. Through a critique of state-based and cosmopolitan based conceptions of distributive justice, the thesis addresses global corporations and the process of CSR as a potential agent for global justice. To this end, the thesis addresses the central research question that asks what demands could and should a conception of global distributive justice make of global corporations and their CSR policies.

In order to respond to this question, the thesis employs a cosmopolitan-liberal theoretical framework, which proceeds from the idea that the potential for the mitigation of suffering is found within the institutional structure that inevitably shapes people's lives. The chapter then elaborated the key argument, which is that global corporations have a profound effect on people's life chances, and went on to detail a number of well-known instances in which this idea is demonstrated. The research activities of the thesis were briefly discussed, highlighting the central research tasks undertaken, as well the challenges and difficulties posed by the research process. The chapter ended with a summary of thesis chapters.

2: Corporate Social Responsibility: An Historical Overview

2.1 Introduction

This chapter gives a brief history of the evolution CSR of policies, and offers a description of the nature and character of CSR. First the chapter details what the global corporation is. Subsequently, the history of CSR is discussed, and is divided into three sections, which detail: traditional forms of corporate philanthropy (pre-1945); attempts at multilateral regulation (1945-late 1980s); and contemporary CSR in the form of codes of conduct (late 1980s-present). The broader historical context of this periodisation is the transition from nineteenth century laissez-faire capitalism, through the post-war construction of multilateral institutions of international governance, to contemporary structures of global governance. Such structures incorporate both public and private actors, blurring the division between public and private authority, and consolidating global corporations' position as powerful global political actors. Thus this history chapter sets up the political and economic context within which CSR has emerged, setting up the case for applying principles of global distributive justice to global corporations.

Codes of conduct are used here to loosely characterise CSR. In general, any policy that can be described as CSR is usually expressed in some form of code of conduct. These codes are broken down into the agents who construct and implement them, their contents, and the procedures and organisational forms used to follow these codes. The purpose of this characterisation is to indicate the

multiplicity of actors involved in codes of conduct, the trans-border nature of their content, and the novelty of their procedures and organisational forms. This characterisation reflects the wider historical context elaborated in the first half of the chapter.

This is written in the context of a massive growth in the interest in and attention being paid to CSR, as well the many instances of widely known and publicised corporate irresponsibility, as detailed in the introduction. Far from an obscure, “alternative” way to conduct business, CSR is for the most part central to the public image of a global corporation. To give an idea of the scale of CSR, in 2008 nearly 80 per cent of the world’s 250 largest companies issued some kind of social and/or environmental report in 2008 (KPMG, 2008: 13). As of October 2009, there are over 6000 participants in the UN Global Compact. CSR is a focus for national governments and global and regional regulatory organisations. For example, the UK government published a major report on CSR in 2004 (DfID, 2004), and CSR is now part of policy developed in 6 UK government departments. The EU has a major web portal devoted to CSR, which contains multiple policy documents about the topic (EU, nd). In 2008, the World Business Council on Sustainable Development had over 200 international leading companies as members, spread over 36 countries, with a total annual turnover of US \$6 trillion (WBSCD, 2008). Increasingly, many corporations describe their CSR policies as being integrated into the core of their business, rather than a separate branch of the business. For instance, Shell’s 2008 Sustainability Review discusses the manner in which its Code of Conduct and Business Principles informs their products, operations, staff and external relationships (Shell, 2008:

3). KPMG reports that 4 per cent of the world's largest companies now included their CSR results within their main business and financial reporting (Ibid).

CSR is also a matter for scholarly attention, not just in terms of research, but also in terms of the education of future business leaders. Academic centres such as the Centre for Responsible Business, University of California Berkeley; The International Centre for Corporate Social Responsibility at the University of Nottingham; The Corporate Social Responsibility Initiative at the Kennedy School of Government at Harvard now exist to both promote research and understanding of CSR, but also to integrate CSR into business education. The Global Compact sees education of business professionals as key to the future of CSR, and in 2009, lists 45 academic participants. The Compact has also produced a series of Principles for Responsible Management Education (UNGC, 2007).

Thus CSR is a central element of twenty first century business practice and academic work both in fields of business, as well as within the fields of global politics and international political economy. Furthermore, it is the contention of the thesis that CSR and global corporations are of great concern to global political theory as well. However, before that core argument is made, it is necessary to provide some more detailed background on the nature of the contemporary global corporations, the history of CSR, as well on the nature of the codes of conduct that constitute most CSR policies. The next section of the chapter gives some short details on what a global corporation is.

2.2 What is a Global Corporation?

The purpose of this short section is to detail what exactly a global corporation is. There are two elements to the description. The first element is that of the relationship between the state and the corporation: corporations must get their licence to operate from a state somewhere. It is the history of the corporate-state relationship that is key to understanding the position that global corporations are currently in, the establishment of legal personality and limited liability being important aspects of this. The second instance is the globality of the corporation, in which corporations span territorial boundaries in a way that is problematic for a conception of distributive justice. What this section aims to elaborate on is the features of global capitalism that underpin the core contention of the thesis about the profound effects of corporations on people's life chances; chapter one outlined a variety of instances of such effects. This section details the system through which such effects are made possible, thus contending that they are in fact a consequence of the systemic (as opposed to incidental) harm caused by global capitalism.

'Corporation' here refers to the dominant form of capitalist ownership of the modern era, in which large scale investment is made possible and the liability of shareholders is limited (Calhoun, 2002a). Key features of a corporation are that it can sue or be sued, pay taxes, and be treated as entity distinct from those who own it or are employed within it; the corporation also allows for succession of ownership, such that its business can continue even if ownership changes. The *global* corporation, or multinational corporation, is an enterprise that can finance,

manage and control productive assets in more than one country (Muchlinski, 2008). Such operations can be linked by ownership, so that regional and subsidiary bodies are owned by a parent company incorporated in the home country. They can also be connected by a series of contractual relationships, thus creating a networked transnational production chain (Ibid). The remainder of this section elaborates on these features further.

2.2.1 Corporate Legal Personality

Legal personality was first given to guilds in the fourteenth century, but by the sixteenth century, this began to be extended to business enterprises, such as the East India Company and the Hudson Bay Company. Initially, governments used corporations as a way to manage colonial trade, thus acting in the interest of the state they originated from. The purpose of these organisations was not explicitly profit making from the outset; in the first book published on the law of corporations, and in the charters of new corporations, a central idea of the corporation was the “better management and ordering of trade in which the corporation was engaged” (May, 2006: 6). Over time, the involvement of corporations in the construction of the infrastructure for developing economies, such as the US and the UK, enabled corporations to establish themselves as quite powerful entities. The establishment of legal identity for corporations has important implications, including the ability of corporations to avoid inheritance tax, and claim certain civil and legal rights (Bendell, 2004a: 8). Bendell also mentions limited liability in this regard. Limited liability is intricately linked to the establishment of corporate legal personality, and refers to the arrangement whereby the liability of shareholders is limited to the amount they have agreed to

pay for their shares (Dignam, 2008). Thus, limited liability can enhance the operation of corporation, by encouraging investment (by limiting the risk undertaken by shareholders) and consequently by encouraging entrepreneurial risk-taking on the part of management. Limited liability is key to understanding the trajectory of the corporation from an organisation with a public role in economic development to a profit-making entity.

Particular technological and managerial techniques were key to corporate expansion in this period and May argues that the example of the US corporation is indicative here (2006: 8). Economies of scale and scope were part of such corporate expansion. In relation to the former, Fordist and Taylorist techniques of organisational logic and division of labour, influenced by the concept of scientific management enabled firms to identify the most efficient production method. In terms of the latter, economies of scope, firms can also grow by expanding the range of goods and services it produces, and by achieving cost savings through expansion by vertical integration (Roach, 2005: 28-30). Some successful examples of such innovations are notable: Truitt mentions Ford Motor Company, IBM as examples of technological innovators, and AT&T and United States Steel as examples of companies that expanded their scope through mergers and acquisitions (2006: 36-37).

This expansion had political implications. May cites Galbraith, who argued that large corporations' ability to position themselves at the heart of the governance of society, so that the largest corporations have the potential to "embed themselves within the governance mechanisms of modern society, but without

any linked political accountability” (Ibid: 9). The most significant aspect of the US corporate model is, according to May, the separation of ownership and management, which enabled corporate professional managers to exercise the rights of corporate personality on behalf of its owners; this has led to instances of corruption, scandal and illegal activities. Thus the depersonalisation of ownership in a sense disrupted the original public purpose that corporations had been set up to achieve:

[...] as shareholders had surrendered active control of, and responsibility for, their property, leaving it in the hands of the managers they employed, perhaps they had also released the wider community from any obligation to protect them to the full extent implied by the strict application of the doctrine of property rights. The balance between the legitimate economic interests of owners and the wider social or community interest remains the key issue for the political economy of corporations (Ibid: 10).

2.2.2 Globalisation of the Corporate Model

The disruption of the state-based public purpose of the corporation is consolidated further by the globalisation of the corporate model. Most authors agree that it is the expansion of the corporation across the globe with only partial or minor constraints as a result of national boundaries that is of utmost significance in analysing the contemporary role of the corporation. The main way in which a corporation expands is through foreign direct investment (FDI). FDI can take many forms: buying all or part of an existing foreign company, establishing a factory or distribution centre in a foreign country, setting up a start up company or a research and development centre in a foreign country, often taking advantage of favourable tax or labour laws (Truitt, 2006: 164-165). Large corporations were further enabled to consolidate their business strengths by

forming “trusts” through mergers and acquisitions; in effect, trusts are super corporations that allowed competitors to protect themselves through the formation of monopolistic agreements (Ibid: 16).

Many successful global corporations consolidate their business through outsourcing. Nike is an exemplary example of this sort of practice, having developed a business model that was premised on not wanting to own anything (Ibid: 65). A corporation that outsources globally spreads its risk to an array of subcontractors, suppliers, distributors and providers of ancillary services (Amoore, 2006: 51). Another commercial practice that aids the consolidation of a corporation’s power across the globe is that of transfer pricing, which enables corporations to sell goods internally within an organisation, usually across national boundaries in order to take advantage of favourable tax laws.

Amoore also discusses more subliminal ways in which the global corporation renders itself a powerful political influence and actor. She cites examples such as the commissioning of management consultants McKinsey & Co to advise on restructuring in the Indian state of Andhra Pradesh, which resulted in their recommendation that 20 million peasant farmers be removed from their land; following on from this the state’s power sector was privatised under a program supported by the UK Department for International Development, the World Bank, Pricewaterhouse Coopers and Accenture (Ibid; 52). This blurring of the role of public and private authority is highly indicative of the behaviour of contemporary global corporations. CSR is a further indication of this blurring, which will be discussed more fully throughout this chapter. Such blurring, in

tandem with corporate activity on a cross-boundary basis, is what presents a difficulty for conceptions of distributive justice.

In this story of the corporation, two things have changed fundamentally. By attaining legal personality, corporations have acquired legal rights akin to an individual, and have developed limited liability, in which a separation of ownership and management has occurred. Thus the original public purpose of the corporation has been disrupted. Consolidating this is the corporation's role in contemporary processes of globalisation, as both a driver of it, as well as a beneficiary. As discussed above, particular commercial practices have enabled this, as well as the way in which corporate activity has been part of a blurring of public and private authority. Thus the profound effects of global corporations discussed in chapter one are enabled by the system of global capitalism in which corporate activity no longer serves a public purpose and is not coterminous with state borders. As the next chapter will discuss in greater detail, CSR can be explained as another feature of this systemic harm, which is what renders it problematic as a response to such profound effects.

2.3 Historical Emergence of CSR

The following three subsections detail the loosely divided historical periods into which the emergence of CSR can be categorised. The first subsection deals with the time period pre-1945, which is largely characterised by corporate philanthropic initiatives. The second subsection deals with the time period 1945 – late 1980s, which was shaped by mostly failed attempts at achieving

multilateral regulation of global corporations. The final subsection deals with the late 1980s to the present time, and is defined by generalised moves towards the self-regulation of global corporations with regard to their social responsibilities.

2.3.1 Period 1: Corporate Philanthropy pre-1945

Prior to the widespread practice of CSR, many corporations acknowledged their societal responsibilities in an importantly different way, though practices of corporate philanthropy (CP). For purposes of clarity, this section deals with the historical period pre-1945. Of course, it is not true to say that CP has now disappeared entirely. However, CP constituted the popular way in which companies interacted with wider society, and differs from current CSR practices. Socio-economic circumstances during this time were such that there emerged glaring inequalities between rich and poor. Many businesses developed a tradition of corporate philanthropy which was quite different from present-day CSR policies. Parkinson differentiates between CP and CSR as the former being when a corporation attempts to address social ills that are not necessarily of its making, the latter being the corporation conducting its activities in a more responsible manner (Parkinson, 2006: 4 note 10).

The motivations behind CP initiatives vary. Some are to do with the practice of benevolent charity; others, on the other hand, were motivated by the idea that wealthy industrialists had an obligation to provide for their own workers, rather than those who were worse off in wider society. In the boom of nineteenth century capitalism, it came to be regarded by some as the duty of the wealthy to donate part of their wealth for the benefit of the lesser off in society. Inherent in

this idea is the inevitability that the wealth generated by capitalism would be unequally distributed. Andrew Carnegie, one of the great philanthropists of this time, who made his fortune primarily in the steel industry, describes this inevitability: “We accept and welcome, therefore, as conditions to which we must accommodate ourselves, great inequality of environment; the concentration of business, industrial and commercial, in the hands of a few; and the law of competitions between these, as being not only beneficial, but essential to the future progress of the race” (Carnegie, 1889: 3). Such inequality can be mitigated by the careful donation of wealth to communities in the form of universities, libraries, parks, and halls. Carnegie cautions against the sporadic donation of wealth to those who are unable or unwilling to help themselves. To assist the “poor” unduly is to simply pauperize them (Owen, 1965: 4). Instead, it is the duty of the rich man (*sic*) to

consider all surplus revenues which come to him simply as trust funds, which he is called upon to administer, and strictly bound as a matter of duty to administer in the manner which, in his judgement, is best calculated to produce the most beneficial results for the community – the man of wealth thus becoming the mere trustee and agent for his poorer brethren, bringing to their service his superior wisdom, experience, and ability to administer, doing for them better than they would or could do for themselves (Carnegie, 1889: 8).

In this then, CP is seen to be a responsibility of the wealthy to correct the poor, and enable them to better themselves. Notions of philanthropy such as these are infused with religious undertones, in particular a Protestant social ethic, and far from being *ad hoc* and sporadic, are construed by Carnegie as the true destiny of those with wealth: “Such, in my opinion is the true gospel concerning wealth,

obedience to which is destined some day to solve the problem of the rich and the poor, and to bring '[p]eace on earth, among men good will'" (Ibid: 11).

Other corporate philanthropic schemes had religious origins as well, also emphasising the particular duties that employers had to their employees, beyond a basic relationship of labour and capital. Entrepreneurs such as George Cadbury provided public housing, education and exercise facilities for his workers and their families, motivated by his Quaker-inspired belief that his duty to employees extended to their physical and spiritual health and well being (Witzel, 2003: 43). In a similar vein of thought, Titus Salt relocated his factory away from its polluted location in Bradford, to Saltaire, where he built a model community, providing houses with running water for employees (Idowu, 2008: 12). Joseph Rowntree was another pioneer in this regard, setting up not only housing schemes for employees, but also pension and profit sharing schemes (Ibid).

CP differs from contemporary CSR, in that it was most often based on a notion of the duties, responsibilities and benevolence owed by employers, either to wider society, or to employees. Such behaviour fits more easily with the original notion that there was a duty of public good in the establishment of corporations. The attitude of benevolent paternalism underpinning CP initiatives may seem unacceptable in contemporary circumstances, but the historical context in which such initiatives took place was importantly different. In relation to Cadbury, Salt and Rowntree mentioned above, they implemented and carried out their schemes in Victorian England, where there was widespread poor health and housing and education provision levels were low. As such, these philanthropists provided

welfare-state type care, before the welfare state existed. However, similarly to current CSR practices, CP schemes were also motivated by the idea there was possible financial gain in looking after people, particularly their own workforces, in this way, i.e. that this sort of investment produced a more productive and motivated workforce.

2.3.2 *Period 2: 1945- late 1980s*

The widespread internationalisation of corporations in the post World War 2 period was paralleled by the establishment of a postwar international economic order - in the form of the World Bank (1944), the International Monetary Fund (1944), and the International Trade Organisation/GATT (1947), the enshrinement of universal principles of human rights in the Universal Declaration of Human Rights (1948), as well as the establishment of the United Nations (1945). In this context, it is interesting to note that despite this unprecedented level of attempted international cooperation, no universal framework for the regulation of global corporations emerged. Had the US ratified the Havana Charter, which established the International Trade Organization, this perhaps would have been different as it included provisions for the protection of investment and the control of restrictive business practices; the subsequent system that emerged however (General Agreement of Trade and Tariffs, the GATT) operated on a much more *ad hoc* basis (Jenkins/UNRISD, 2001: 1-2).

By the 1970s, there emerged a growing concern about the power of transnational corporations, particularly in the context of the New International Economic

Order at the UN, which put forward a set of proposals regarding trade, aid and debt for developing countries. The central tenet of a new North-South dialogue regarding the prospects of developing countries was the entitlement of such countries to regulate and control the activities of multinational corporations operating within their territory. This development meant that corporate activity was recognised as being integral to the socio-economic wellbeing of a country. There emerged during this time a variety of attempts to regulate such corporations on a multi-lateral basis. In 1974, the UN established the United Nations Centre on Transnational Corporations (UNCTC), the aims of which were to understand the political, social, economic and legal effects of TNCs, to secure international agreements that promote positive contributions towards national development goals, and to strengthen host countries' negotiating capacity (UNCTAD 2002). This led in 1977 to the creation of a voluntary *Draft Code of Conduct on Transnational Corporations*. This code set out the following: that TNCs should respect host countries' development goals, observe their domestic laws, respect fundamental human rights, adhere to socio-cultural objectives and values, abstain from corrupt practices, and observe consumer and environmental protection objectives (FoE, 1998: 1). By the early 1990s however, efforts to agree on this code stalled, due to pressure from Northern governments and corporate lobbying (Bendell, 2004a:12) and/or more explicitly, pressure from the US government (Ibid: 2). The Centre was eventually subsumed within the UN Conference on Trade and Development in 1993, after a brief period in the UN Department for Economic and Social Development.

Another significant, but ultimately weak, attempt at regulating transnational corporations came in the form of the OECD *Guidelines for Multinational Enterprises* in 1976, which was revised in 1979, 1982, 1984, and 1991, with the most significant revisions being made in 2000 (see OECD, 2000). These guidelines cover standards in relation to the disclosure of information, workers' rights, industrial relations, environmental protection, combating bribery, consumer interests, science and technology, ensuring competition and taxation, respect for human rights, and elimination of child labour and forced labour. However, as with many other multilateral instruments of this nature, the Guidelines are voluntary, non-specific, and poorly implemented (FoE, 1998: 4), thus having little impact on the behaviour of transnational corporations. Essentially, they were designed to deflect criticism of the activities of such corporations (Jenkins/UNRISD, 2001: 4), rather than a meaningful attempt at developing a system of checks and balance on corporate behaviour. Like many multilateral attempts at regulation, these guidelines lack an enforcement mechanism (May, 2006: 4).

Other international multilateral agreements included *The International Labour Organization's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (see ILO, 2006) and UNCTAD's *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* (see UNCTAD, 1980). The ILO's Declaration was first adopted in 1977, but was revised in 1991, 2000 and 2006. The purpose of the Declaration is to "encourage the positive contribution which Multinational Enterprises can make to economic and social progress, and to minimise and

resolve the difficulties to which their various operations may give rise” (see ILO, 2006). It requires companies to give due respect to the sovereign rights of states, obey national laws and regulations, respect the Universal Declaration of Human Rights, and act in harmony with the development priorities and social aims of host countries (FoE, 1998: 4), but again is voluntary and fairly limited in its requirements.

UNCTAD’s Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices [“the Set of Principles”], adopted in 1980 (see UNCTAD, 1980), is worth noting as it is a good indicator of the changing attitude towards TNCs from the 1980s onwards. Whilst the 1970s had seen moves towards the multilateral regulation of TNCs, this period involved the consolidation at an international institutional level of the perceived value of TNCs and foreign direct investment in the creation of wealth and prosperity, especially in developing countries. This occurred in the context of the dominant political-economic values of Thatcherism and Reaganism. This Set of Principles was created because of the “need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries” (quoted in FoE, 1998: 5). This type of agreement is indicative of the wider attitude of this time that the *attraction of*, rather than the governmental regulation of, TNCs was key to successful socio-economic development. As such, the climate became one of enablement of corporate goals, rather than any type of governmental regulation or restriction of corporations. By embedding the

generation of profits by corporations with the trophies of economic growth and prosperity (and thus successful “development”), and intertwining the role of the corporation with the role of the state (in the sense that the state was seen as secondary to the corporation in the generation of economic growth), the position of corporations as powerful key players in the global economy was established.

2.3.3 Period 3: late 1980s-Present

In this sense then, the genesis of company-led corporate social responsibility policies needs to be seen in the wider context of the political and economic international order of the 1980s and 1990s. As the political climate moved towards increased deregulation and liberalisation of the global economy, the capacity of the state began to be “rolled-back” and the position of the corporation as a global actor was consolidated. However, the neo-liberal consensus of the 1980s was diluted somewhat by the 1990s (Jenkins/UNRISD, 2005: 527), and attention came to be focussed on the behaviour of corporations in terms of their labour practices, and social and environmental impact.

Rather than prompting a wave of attempts at the global public regulation of corporations however, instead corporations began to engage in self-regulation. This is indicative of the widespread change in the position of the state within structures of global governance, and, as CSR has been put on the agenda of international organizations such as the World Bank and the UN, demonstrates the extent to which the line between global public and private authority is blurred in contemporary circumstances.

More specifically, the move towards corporate self-regulation and CSR policies has been driven by a number of factors. First, with an increase in the levels of FDI and the structures of a transnational corporation adapting to cope with such expansion, global business operates by means of global supply chains, in which a company can control production without exercising ownership (Jenkins, 2001: 7). Because of this mode of operation, a causal relationship is set up between vast webs of suppliers, so that it is hard to avoid the inevitable claim of responsibility on the part of a head company for the conduct of a contractor or supplier.

Second, Jenkins also cites the importance of intangible assets to a corporation's value, particularly in the trend towards branding and its associations with corporate image (Ibid). Although trademarks and brands have a history of use that extends back to guilds in the fourteenth century (May, 2006: 5), the late twentieth century was a period in which corporate branding became a key marketing strategy for global corporations. Increasingly, one of the main strengths of a global corporation is in the reputation (rather than just the quality) of its brand. This phenomenon works alongside global supply chains and outsourcing, as mentioned above, so that branding "allows the networks of production and services behind a brand to become so loose and diffuse that connections are rarely made between immigrant workers, gangmasters, human trafficking, and the salad on our plates" (Amoore, 2006: 61). However, the converse of this has also become true. While corporations have outsourced their operations to the point that they bear little direct (legal) responsibility for the standards in their subsidiaries, the value of their brand has increased because the

brand has been used as the main asset in the marketing and sale of the product. The ability to connect unethical practices in a distant factory with, for example, clothes that are bought in a well-known branded clothes shop, can be severally damaging to corporate reputations. This “market-based vehicle” provides corporate accountability movements with a way in which a corporation’s behaviour in one country can be linked with its reputation in another (Vogel, 2006: 9). In the context of the rise in corporate accountability movements (see below), the negative impact of this strategy is something that such corporations seek to avoid at all costs.

Third, and perhaps most importantly, CSR policies have been driven by a massive growth in civil society and social movements, many of which have had corporate responsibility and accountability as a target for exposure/confrontation, and more recently, collaboration (Utting/UNRISD, 2005b: 10). Bendell states that, for example, by 1999, the nonprofit sector in 22 countries employed 19 million people full-time, turning over \$1.1 trillion annually, over 100,000 part-time employees and 1.2 million full-time volunteers were working for international non-governmental organisations in France, Germany, Japan, The Netherlands, Spain and the UK (cited in Bendell, 2004a: 12). This growth in the popularity and strength of civil society activists and NGOs working on global issues was aided by the vast developments in communications technology, enabling such groups to disseminate information with unprecedented speed, regardless of geographical distance.

Although crude, a distinction needs to be made between two different types of civil society activity in the context of CSR. On the one hand, there is what Bendell describes as “confrontational engagement”, or forcing change tactics on the part of such groups that dominated the early 1990s (Ibid: 13). Such tactics involve the highlighting of bad practices on the part of corporations, the organisation of boycotts and protests, and an attempt to raise general awareness about the participation of well-known brands in unethical or unacceptable business practices. One well-known campaign has been that against the use of “sweatshops” by Nike throughout the 1990s (for a chronology of events, see CCCE, 2009). A similar campaign was that of Baby Milk Action, which campaigned specifically against Nestle and their promotion of formula feeding of infants in the developing world (see Baby Milk Action, nd). These campaigns were both aided by, and an integral part of, the counter-globalization movement of the late 1990s, and events such as the World Social Forum, and the European Social Forum have given increased legitimacy and publicity to the civil society movement to highlight the power and responsibility of corporations.

On the other hand (partly as a result of the success of such movements, and partly as a result of the international political-economic climate of the time), civil society groups have also come to be involved at the level of both domestic and international governance in the development of CSR policies. In the main, this involves what are now known as public-private partnerships between business, civil society actors, and governmental institutions, or the creation of codes of conduct under the auspices of multi-stakeholder initiatives. Examples of such initiatives are the Global Reporting Initiative, the Global Fund to Fight AIDS,

Tuberculosis, and Malaria, The Forest Stewardship Council. At the level of the UN, civil society group (as well as business sector) participation in World Conferences and Summits has increased throughout the 1990s, for example in events such as the 1992 Earth Summit in Rio, the 1995 World Summit on Social Development in Copenhagen, and the World Summit on Sustainable Development in Johannesburg in 2002 (Forman and Segaar, 2006: 17).

In sum then, CSR policies have been developed as a result of (in the context of) 3 different phenomena: 1. the political-economic international climate of the 1980s and 1990s which emphasised a reduced role for the state in regulating business. This should be seen in the context of the priority given at the international institutional level to neoliberal economic policy. 2 the changing mode of operation of business, in which different suppliers and firms become involved in a chain of responsibility which ends with the all-important brand reputation; and 3. the growth in civil society activity highlighting this chain of responsibility, which has resulted both in pressure on corporations to reform, and partnership with government and business in order to develop and implement such reforms. Taken together, these three phenomena highlight the idea that CSR is both a reaction to and a manifestation of contemporary processes of globalisation.

2.4 Codes of Conduct: Agents, Content and Procedures of Corporate Social Responsibility

One of the biggest difficulties in analysing CSR policies is that CSR means a variety of things to a variety of people. There is no one way of “doing” CSR, and

it can involve the development of many different policies and new *modus operandi*, from partnership with government, NGOs, or other companies, to the development of new codes of conduct that represent the particular values the companies see as being part of their social responsibility. In general, however, CSR policies are expressed in the form of codes of conduct, although the content of and participants in these codes are by no means uniform. The rest of this section of the chapter outlines the different types of agents involved in codes of conduct, the matters such codes seek to address, and the procedures such codes follow.

2.4.1 Agents of CSR

CSR policies involve the participation of a variety of stakeholders in the development or construction of a code of conduct that expresses a company's commitments regarding the impact of its activities in the wider community. The idea that a variety of actors (generally held to be those who are either impacted by, or have an impact upon, the action in question) ought to be involved in this process has been theorised by stakeholder theory. The central idea behind stakeholder theory is that traditional theories of management put too much emphasis on the importance of shareholders in the business, and that there are a variety of other stakeholders associated with the operation of the firm to whom due recognition must be given. Freeman proposes that there ought to be an equal relationship between the firm and all stakeholders; generally, these stakeholders are (in no particular order), owners, management, local community, customers, suppliers, and employees (Freeman, 2002: 42). As such, the firm's primary

responsibility is not to shareholders but to all actors who have an effect on, or are affected by the activity of the firm. The idea is that the firm ought to be managed with due regard to the equality of all stakeholders and that as well as being concerned with the “bottom-line” (profitability), a firm should also pay due regard to the “triple bottom line” (social and environmental impacts of its activities).

Initially, codes of conduct were primarily developed unilaterally by companies or business associations, rather than with the participation of multiple stakeholders (Utting, 2002: 69). In the early 1980s, most codes that were adopted unilaterally by companies were to do with questionable payments, prompted largely because of the US Securities and Exchange Commission’s investigation into such payments (Jenkins/UNRISD, 2001: 5). This approach was apparently a convenient one for business, in the sense that by developing their own regulatory codes, corporations avoided external interference and controlled the direction of regulation. It was, however, open to criticism: allegations of greenwash, an *ad hoc* approach, and the gap that often existed between what appeared on paper, and what was done in practice (Ibid).

In the context of this type of criticism then, the trend shifted towards the participation of a variety of actors in multi-stakeholder initiatives in the construction of corporate codes of conduct. Primarily, actors include: NGOs, trade unions, business and industry associations, corporations, global public governance agencies and national governments. Such initiatives form links that transgress the territorial boundaries of the states in which they are based, thus

reflecting the nature of the corporate environment that they are trying to regulate. The structure of these initiatives and the range of actors that participate is not fixed or uniform.

For instance, Business for Social Responsibility (BSR) is a non-profit business association based in the US, but lists as its global alliances as The UN Global Compact, The Ethos Institute (Brazil), Business in the Community (UK), amongst others. Its major funders are traditional philanthropic associations such as The Ford Foundation, and government agencies, such as the US Department of State. The Ethical Trading Initiative has a membership that incorporates corporations, international trade union confederations, and global NGOs, as well as the UK's Department for International Development (DFID). At the level of supranational governance agencies, the EU's Multi-Stakeholder Forum on Corporate Social Responsibility (see EU, 2004) incorporates regional business associations, global NGOs, regional trade union federations, and global public governance agencies. Similarly, the UN Global Compact operates under the auspices of a global public governance agency, but is centred around the participation of a wide range of actors from both public, private and non-governmental sectors.

This multi-stakeholder approach has obvious implications for the content and organisational form of the codes of conduct, which will be dealt with in further detail below. In terms of the actors involved, the array of participants in multi-stakeholder initiatives are a good indication of the way in which codes of conduct, and CSR, are constructed as both a public and private responsibility. In

this form of regulation, what Utting calls “articulated regulation” (2005: 8) or what has elsewhere been called “regulated self-regulation” (cited in Ougaard, 2006: 247;), authority (albeit what might be called “soft” authority) stems from both public and private sector on a non-territorial (global) basis. The success of a multi-stakeholder initiative is dependent on the all actors’ participation, be it governmental participation to add a degree of legitimacy, NGO participation for the articulation of special interest groups needs/interests, or corporate participation to lend an element of feasibility to the process. In this sense, the authority derived from multi-stakeholder codes of conduct is only as good as the sum of its parts.

The multiplicity of actors involved in the creation of corporate codes of conduct is not without problems. Although it purports to be a more democratic way of constructing CSR, it raises some important questions which relate to the overall success of CSR. On paper, the participation of all relevant stakeholders ought overall to be a good thing. However, power dynamics come in to play in this instance, so that the very issue of inclusion in or exclusion from the dialogue becomes problematic in terms of the resulting code of conduct. For instance, Newell has pointed out that very often the poorest sections of the community are excluded from the processes of constructing codes of conduct, often because they are not seen as legitimate stakeholders, or because their interests are presumed to be represented by those bodies already involved in the process (2005: 543). By using the stakeholder process as the justification for the content of a code of conduct, we learn nothing about “the observable and non-observable uses of power in stakeholder relationships, or the rights and responsibilities of

stakeholders” (Blowfield, 2005b: 180). Additionally, there can be problems in relation to the legitimacy of actors in terms of the communities they speak for. NGOs, in this regard, are problematic because, as Newell points out, NGOs have their own political agendas to play out in CSR processes, which may not necessarily align with those of a community they purport to represent (Newell, 2005: 552). Similarly, Utting has pointed out that many trade unions have difficulties with NGO participation in such processes, because of the ambiguity of their status as legitimate representatives, as well as the manner in which NGOs participate in processes that operate outside of democratic public policy processes (Utting, 2005: 9). The general point here is that multi-stakeholder participation within a CSR process does not get around the fact that it is still an inherently political process, within which the political dynamics of power are played out. As is discussed later on in the thesis, justice is contingent on such power dynamics being rectified. The ideas set out in chapter six attempt to address problems in this regard.

Despite this, the convergence of different actors in the formation of codes of conduct is important from the point of view that it illuminates a lot about the context in which CSR is constructed. Implicit in the variety of actors is the idea that corporate responsibility is not just a matter of private (self) regulation, or public (state) regulation. This reflects the generalised move in the last twenty years of the twentieth century away from the “hard” regulation of public governance agencies, in particular the state; and, more recently, the curbing of the private authority of corporations, albeit in ways that do not fit easily into a model of public regulation.

2.4.2 Content of Codes

CSR seeks to address many different phenomena that fall outside the realm of traditional business activities. They can be directed at issues of labour standards, environmental sustainability, human rights, health care provision, education, and housing. The content of a code is entirely dependent on the particular code in question, and there is no standard for what is included and what is excluded. Additionally, what is included also depends on the particular constellation of stakeholders involved in the construction of the code (see above), and the final outcome of a code is a reflection of the power dynamics at play between such stakeholders. This section focuses on labour standards, environmental standards and human rights as the three key areas which codes of conduct address. Although there are many codes that address a wide diversity of issues (often ones that are of direct relevance to the particular industry) the three chosen here form the basis of the majority of codes, and have a background in multilateral attempts at regulation of corporations.

Labour standards are a key area of attention for corporate social responsibility because of the changes contemporary globalization brings about for work practices and job security. Outsourcing and technological change have implications for workers in terms of both how they do their jobs, how they negotiate relations with their employer, as well as the fairness of the payment they receive for their labour. In a recent UN study of more than 300 companies, labour rights were found to be the most recognised of rights by companies surveyed (Wright and Lehr, 2006: ii). Whereas the issue of labour standards and

worker rights was once primarily a matter of negotiation between employer, state and trade unions, contemporary CSR means that these issues are often dealt with in multi-stakeholder codes, as well as the traditional mechanisms of social partnership. On a most basic level, labour standards means the right to freedom of association and collective bargaining, elimination of forced or compulsory labour, elimination of the worst forms of child labour, and the elimination of discrimination with respect to employment. This list is based on ILO conventions. The above mentioned standards are included in multi-stakeholder bodies such as the UN Global Compact (principles 3, 4, 5 and 6; see UN Global Compact: no date b), the Ethical Trading Initiative (points 1, 2, 4 and 7 of The Base Code; see Ethical Trading Initiative: 2001)), the Clean Clothes Campaign (principle 2; see Clean Clothes Campaign, 2006), and the Fair Labor Association (see Fair Labour Association, 1998).

As mentioned above however, which standards appear and how far-reaching they are seems to vary according to the initiative in question. For instance, within the Clean Clothes Campaign and the Fair Labor Association, there is much discussion of the right of employees to a living wage, which is based on ILO conventions 28 (1928) and 131 (1970), and the methods that ought to be used to determine what a living wage is, yet there is no mention of a living wage at all in the Global Compact. Such selectivity of principles is borne out in practice by an ILO review of codes of conduct, in which principles related to occupational health and safety appeared in 75 per cent of codes reviewed, whereas those related to freedom of association and collective bargaining appeared in only 15 per cent (cited in Diller, 1999: 112). This selectivity is indicative of the paradox

in how codes of conduct operate in relation to employers. In effect, codes of conduct are a self-limitation on the power of the firm with respect to its employees, yet it can be argued that such self-limitation mainly occurs when it is advantageous for the employer to do so (Murray, 1998: 5).

The role corporations can play in both the degradation of the environment, and the effort to stem such degradation is central to CSR. Climate change is impossible to address adequately on a state by state basis; it is by its very nature trans-border. To the extent that they are unconstrained by territorial boundaries, global corporations can transcend the difficulties experienced by states in this area. At the same time, global corporations are highly culpable for the extent of environmental degradation, with their activities having quite serious environmental consequences along the value chain (Newell and Levy, 2006: 159). Codes of conduct, then, are the way in which corporations deal with such issues. As opposed to the area of labour standards, the issue of environmental standards is a relatively new one, and so it seems to have been possible for corporations to a certain extent to control the discourse of CSR in this regard. Whereas labour standards have a long history of the trade union movement, and are traditionally a site of struggle between workers and firms, environmental standards as an issue of corporate responsibility have come to the fore more recently, in an era of intensified globalization in which corporate power is a significant strand of global governance.

This is a good indicator of the role that the state can and cannot play in questions of CSR. In relation to labour disputes, many workers are protected by their right

to strike. There is no such similar threat in the case of climate change. The right to strike is in most instances protected in domestic legislation, and trade unions are key actors in many domestic policy negotiation processes in many countries. The issue of corporate responsibility in respect of climate change is importantly different – as mentioned above, states cannot deal with climate change alone, and so cooperation from the corporate sector is vital. As well as this, it is possibly easier for corporations to ignore the demands of climate change, given that a large of part of those who could be severely affected are future individuals. Climate change, and environmental standards are, then a good indicator of the nature of contemporary CSR policies.

Like other issues that are addressed by corporate codes of conduct, environmental standards can mean different things, according to the manner in which it is being dealt with. General principles of environmental protection, as laid out in the Global Compact, are that businesses should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies. Like labour standards, these principles are based on global public instruments of governance, in this case the Rio Declaration on Environment and Development. Industry-based codes, such as the international chemical industry's code "Responsible Care", are more specific to the type of environmental hazard posed by the particular industry. Its guiding principles, whilst mentioning more generalised practices of CSR, such as stakeholder engagement, also incorporate pledges that are directly relevant to the chemical industry, such as resource conservation and waste

reduction (Responsible Care: 2009). Environmental standards are also dealt with in multi-stakeholder initiatives that involve more input from civil society, and as such could be seen to be more far-reaching, and less at risk of the accusation of “greenwash”. The Forest Stewardship Council, which was set up to promote sustainable forestry management for instance, cites, amongst other principles, the rights of indigenous peoples, and the conservation of biodiversity and fragile ecosystems (Forestry Stewardship Council: 1996).

Human rights are increasingly recognised as a matter for concern for corporations. Like environmental standards, the link between business and its responsibility for human rights is a relatively new one; for instance Amnesty International only began their work on CSR and human rights in 1996. There is a vast array of global public governance instruments in relation to human rights, but at a basic level (with reference to the UN Declaration on Human Rights), human rights are held to encompass: the fundamental equality of all persons, the right not to be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; the right to life and security; the rights to personal, social, economic and cultural freedoms (UN, 1948). There are two main instruments at the UN level that make explicit the link between business and human rights: the UN Global Compact, and the *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*. In the case of the Compact, the principles are not set down in law and it is specifically a non-regulatory, voluntary initiative (Kell and Levin, 2003: 152). In the case of UN Draft Norms, they were interpreted to be similar to UN “soft

law”, such as UN declarations, guidelines and standards, and are considered to have more strength in terms of enforcement and governance structures (Mantilla, 2008: 286). Thus, there is a growing recognition of the link between business and human rights, given that international law increasingly recognises the legal rights and responsibilities of non-state actors. On this basis, Cutler points out that normative claims can now be made about corporate conduct with respect to human rights (Cutler, 2006: 208).

The UN norms in this regard, while seen by some as controversial and the cause of bitter debate (Kinley and Chambers, 2006), are also seen as an important stepping stone in the direction of clarifying global corporations legal responsibilities in relation to human rights (Mantilla, 2008: 289). While they were not officially considered or voted against by the UN Human Rights Commission, instead being “set aside”, the debate that ensued is significant. Other legal instruments have been used to pursue allegations of corporate abuse of human rights. For instance, the US Alien Torts Claims Act has recently been used to prosecute US companies for human rights abuses in foreign countries. A notable example in this respect was the prosecution of Shell in 2009 in New York on behalf of the Ogonii people of Nigeria, as mentioned in the introduction.

Thus there has recently been some progress towards clarifying global corporations’ legal responsibilities with regard to universal rights, and in some instances the issue of human rights abuses has been pursued within the realm of public domestic regulation. Civil society activists have been responsible for exerting significant pressure in relation to the role corporations have to play in

the protection of human rights. Cases such as the execution of the Ogoni 9 in Nigeria, and the behaviour of private security firms in Colombia led Shell and BP to take on board human rights concerns (Amnesty International, 2003b: 2). However, these processes are contested and resisted at various different junctures. Kinley and Chambers point out that attempts to establish a form of global public regulation of corporations with respect to human rights in international law (for example, the UN Draft Norms mentioned above) have been roundly condemned by business leaders in favour of their own methods of self-regulation (2006: 449). Mantilla details the different reactions of states to the UN Draft Norms. On the one hand he found that the home states of global corporations tended to be against the norms, while host states (generally those of developing countries) tended to advocate their adoption as legal norms (Mantilla, 2008: 287-288).

Thus the content of codes of conduct is by no means concrete, and the overview given here should not be seen as definitive. What is important to note, however, is that the issues addressed by codes of conduct of necessity involve the participation of many different actors, including states, corporations, NGOs and international organisations. For instance, climate change cannot be addressed on a state-by state basis; similarly, labour relations cannot be addressed without reference to states (within whose mechanism most employee rights are guaranteed) or without reference to trade unions. Thus the content of codes highlights that the political questions addressed by CSR cannot be answered by reference to any one form of organisation be it public or private, national or international.

2.4.3 Procedures

Like the agents who are responsible for codes of conduct, and the content of codes of conduct, the procedures used to implement codes of conduct and the organizational form they take are not fixed. In terms of these procedures, there is an interesting blurring of the public and the private that occurs, which largely stems from the multiplicity of actors involved in the procedures. This section details the main procedures and organisational forms of codes of conduct.

Increasingly, corporations are using their annual reporting as a way of being seen to be implementing their own CSR policies. This is known as “triple bottom line” reporting, which obliges corporations to report not just on profitability, but on social and environmental performance as well. This can be done by including social and environmental elements in their annual reports, or by allowing other companies to scrutinise their performance and then produce a report on them (see for example the McKinsey & Co report on the performance of companies who are part of the UN Global Compact; McKinsey & Co, 2004).

The Global Reporting Initiative (GRI) is one of the most popular frameworks for reporting on social and environmental performance. To date, there are about 20,000 stakeholders from over 80 countries involved in the GRI. It operates as the collaborating centre of the United Nations Environmental Programme, and thus, the guidelines are offered as a free public good. In 2008, over 1000 companies had produced a report based on GRI guidelines (GRI, 2009b). The GRI is seen to be something of a partnership organisation to the Global Compact.

The Compact provides the framework of values that a corporation signs up to, while the GRI offers the practical guide on how to do this (see GRI, 2009a). One of the requirements of the Compact is that a corporation provides a Communication on Progress, and the GRI framework is promoted as the “logical” way in which to do this (Kell, 2006: 45). There are also a variety of private consultancy agencies that offer similar guidelines, for example The Corporate Citizenship Company, but which lack the global public element of initiatives such as the GRI.

Like the GRI, standardisation bodies offer a means by which corporations can acquire internationally recognised endorsement of their operations in terms of social and environmental performance. ISO 9000 is becoming increasingly involved in the environmental and social concerns of the CSR agenda and sees this as one of its growth areas (see ISO, 2006). Social Accountability Standard (SA8000) on the other hand was set up specifically in 1998 for providing a way of standardising a corporation’s operations in terms of social and environmental impact (see Social Accountability Standard, 2001). Another example is AccountAbility, a multi-stakeholder, membership-based organisation, involved in the promotion of responsible business practices, and the broader accountability of civil society and public organizations (see AccountAbility, 1999).

The guidelines these bodies offer are not strict codes of conduct, but offer uniform criteria by which different corporations’ interpretation of the general principles can be judged. The drive for standardisation of principles is somewhat paradoxical in the context of the desire corporations seem to have had to

maintain control over CSR and to use self-regulation as a way of pre-empting public regulation. However, there are reasons for this move towards standardisation. In a world of competing codes of conduct, standardisation of principles offers both efficiency gains and competitive advantage (Ougaard, 2006: 245). Ougaard also points out that corporations are increasingly seeking out standards that have an official stamp of legitimacy from political authorities, thus indicating a move away from privatised self-regulation (as mentioned above) towards what Knill and Lehmkuhl call “regulated self-regulation” (cited in Ougaard, 2006: 247).

Utting points out that the standardisation and reporting procedures outlined above can be limiting in the sense that they involve the collection and checking of a vast number of different principles, and the complexity of these procedures can hamper their feasibility and scaling up (Utting, 2002a: 63 and 2005b: 9). Complaints-based procedures can offer another way in which the behaviour of a corporation can be exposed and monitored. This can be done in a variety of different ways, such as consumer boycotts, shareholder activism, and transnational litigation, and can take on a variety of different institutional forms, such as through judicial and parliamentary procedures, global collective agreements between TNCs and trade unions, and NGO-watchdog bodies (Utting, 2002a: 63-4).

The Fair Labor Association (FLA)’s Annual Report 2006 (see FLA, 2006: 22-24) details a case-study in which a type of complaints based procedure was implemented following the dismissal of three workers for attempting to organise

a trade union branch in a Nike-affiliated factory in Thailand. The procedure centres on the multi-stakeholder body acting as a facilitator for dialogue between the dismissed workers, the factory management, Nike management, and Thai government officials, following a complaint being lodged with the FLA. In this particular case, the workers were reinstated, and the trade union branch was permitted, as well as the implementation of changes of some work practices. Similar to the point above about “regulated self-regulation”, Utting calls these types of procedures “post-voluntarist” that are an indication of a move away from entirely voluntary and private approaches to CSR (Utting, 2005a: 384).

Procedurally, one of the most interesting things about codes of conduct and the multi-stakeholders that construct and implement them is the organizational form they take. Despite the fact that many of the participants are bureaucratic hierarchical institutions, involvement with such a multiplicity of actors necessitates an alternative organisational form. One of the most common features of many multi-stakeholder initiatives is their organisation into learning networks. It seems that the dissemination of knowledge between stakeholders is the preferred way in which participants learn about CSR. The Global Compact is an inter-organisational network (ION), in which various autonomous organisations (in this case, global corporations) come together in a shared conceptual system to achieve goals that they could not achieve alone; the knowledge generated by the pursuit of these goals is disseminated amongst other members of the network, thus providing a continuously evolving bank of information all of which should contribute to the wider aim of the promotion and adoption of the ten principles (Kell and Levin, 2003:155; Ruggie, 2002). There is no authoritative hierarchical

bureaucratic structure, with the Global Compact office acting as a facilitator of communication and partnership projects between participants (Kell and Levin, Ibid). In this way then, participants in the Compact not only have to report on their performance, but this performance is made available and shared amongst all members. Further details on the organisational nature of the Compact are given in chapter seven.

Furthermore, it seems that this dissemination of knowledge along such networks is making codes of conduct and CSR a form of governance that is more explicitly public, in the sense that a lot of the information regarding CSR is accessible to the wider public. A primary example in this regard is the organisation the Business and Human Rights Resource Centre, an organisation set up in 2005 at the request of John Ruggie, in his capacity as the UN special representative on business and human rights. The purpose of this initiative is to make available, via a website, a vast array of documents in relation to business and human rights (See Business and Human Rights Resource Centre, 2009). Another example is CSRwire, a source of CSR and sustainability news, whose members are NGOs, companies, organisations and associations interested in the spread of knowledge and information about CSR (See CSRwire, 2009). Additionally, it is a requirement of the Global Compact that all participants make available what is known as their Communication on Progress; participants who do not do so after two years are labelled as “inactive”. The GRI, as detailed above, make all the reports submitted to them available for public use via their website.

This phenomenon is interesting from the point of view of governance, as it means that although many of the actors involved in this type of governance are essentially private, their participation is being made quite explicitly public. The existence of these sources of information means that the discourse of CSR becomes part of a public sphere of knowledge; the awareness this creates in terms of private global governance structures is important. This type of transparency and accessibility of information and decision-making procedures goes some way towards establishing a degree of accountability, or at least provoking further scrutiny that may lead to a form of accountability. In this sense, the “opening up” of CSR to the public sphere creates some form of legitimacy for it. Similarly, by changing the way in which business is taught, CSR to a degree becomes normalised in the eyes of those who shape the business world. The publicity of rules and standards related to CSR is important for the argument that is made in chapter five, regarding distributive justice and corporations.

2.5 Conclusion

This chapter has given a brief description of the nature of global corporations, as well as a brief history of the development of CSR policies in the context of the changing structures of global governance in the latter half of the twentieth century. Although originally created with some semblance of a public goal, corporations have become a symbol of the profit-making goal of twentieth century capitalism. This has occurred through the development of various

management and commercial techniques that firstly afforded corporations limited liability and secondly allowed their expansion across territorial borders.

There are two central ways in which the historical story presented in the chapter is important. In the first instance, the history of the corporation and the emergence of CSR are important for an argument about distributive justice because the wider issue of the role that the contemporary state can play in affecting people's lives is an intrinsic part of it. As mentioned early on in the chapter, corporations in their first historical iteration were granted licences to operate from particular states that were conditional on their fulfilling a public purpose – hence the development of railways, for instance. More recently, in the latter half of the twentieth century, multiple attempts were made by multilateral organisations (whose authority derives from states) to regulate corporate activities and to legally codify corporations' social responsibilities. In contemporary circumstances the role of the state in relation to the corporation is ambiguous and ill defined; on the one hand, many states endorse and fund CSR practices, and act as partners to corporations in such initiatives, while on the other, states are constrained by their territorial boundaries to regulate global corporations that are not similarly constrained. As the references to Amoore mentioned above indicate, this represents a blurring of global public and private authority. This is problematic for distributive justice because most theories of distributive justice rely on binary opposites such as domestic/international, or public/private, to determine the way in which the question of distributive justice is approached. Thus, the historical background of CSR is indicative of the wider context in which questions of (global) distributive justice emerge in

contemporary circumstances, as well as being indicative of how responses to such questions should be developed.

The second way in which this story is important is in terms of the historical constraints that this history exerts on the practice and process of CSR. As the first part of the chapter discussed, the activities of global corporations are enabled by a system of global capitalism, which has established legal personality and globalised the corporate model across territorial boundaries. Historically, attempts to regulate corporations by multilateral institutions in terms of their social responsibilities have for the most part failed. This historical fact is important in the consideration of what justice requires in relation to corporations, as it points to a key problem with CSR as a response to allegations of corporate wrongdoing. The next chapter critiques CSR as another feature of this system and thus inadequate as a response to the contention of systemic harm. Chapter six attempts to find a way around this, by focusing on making a differentiation between what is desirable and what is feasible in relation to justice and corporations, and divides the ideas proposed into aspirational and concessive theory. The latter set of ideas concede to the facts of global capitalism, global corporations and to the reality of how CSR is practiced. In this regard, the historical context of the emergence of CSR informs the extent to which a proposal about justice and the corporation should concede to facts. The next chapter extends this attempt at understanding CSR by developing a Polanyian and Gramsci influenced theoretical explanation for why CSR emerged and why it takes the form it does. This explanation also informs the concessive theory of the thesis.

3: Explaining CSR: Polanyian and Gramscian Insights

3.1 Introduction

The purpose of this chapter is to develop a theoretical explanation for the emergence of CSR, as well as an explanation for the form and content that the process of CSR conventionally takes. These explanations will ultimately lead to insights as to what needs to be conceded in the conclusions of the thesis as regards a concessive theory of global distributive justice. In the previous chapter, the historical context of CSR was described in terms of three historical periods, in which the discourse and norms about the responsibilities of business to society shifted from that of corporate philanthropy, to attempts at multilateral regulation and on to what is now termed CSR, which is a process of self-regulation albeit incorporating a multiplicity of political actors.

However, what is of interest for the questions the thesis has posed about justice and the global corporation is a deeper explanation for why CSR has emerged in the time it has, and why it has taken the form it has. In attempting to gain some understanding of these questions, the chapter sets up the discussion in later chapters about what justice in relation to corporations means. Given the aim of the thesis to create a synthesis between a political-economic understanding of CSR and a normative view of justice and the corporation, it is helpful to provide a thorough explanation for why CSR is the way it is. As such, the chapter draws on insights from Polanyi and Gramsci to do this.

The first section of the chapter briefly discusses further the value of this explanatory chapter. The second section discusses some key Polanyian ideas – embedded liberalism, and the double movement – and details how Polanyi's arguments that an inevitable resistance emerges within societies that have been dominated by free market principles. The next section discusses the globalisation of these ideas, detailing how global civil society activists as well as the financial crises of the late 1990s constituted a form of resistance to unfettered global capitalism. As well as this, the section discusses CSR specifically, viewing CSR as a reaction on the part of global corporations to these forms of resistance. The key point for these sections that derive from Polanyian ideas is that the emergence of the phenomenon of CSR is usefully explained as a reaction to neo-Polanyian resistance of global capitalism, in which corporate activity is highlighted as something that needs to be restrained in order for capitalism itself to be sustainable.

The final section of the chapter turns to the form and content of the CSR process and uses Gramscian ideas to explain why CSR takes the shape it does. As such, why particular issues are on the agenda and others are not, and why the process of CSR excludes some groups and not others. In this, the Gramscian idea of the hegemonic bloc of global capitalism is used to understand the process, and it is argued that the control that processes of global capitalism exert on it render it an inherently limited process. The conclusion summarises the chapter and indicates how the ideas articulated within it are important for forgoing discussions about justice and the corporation.

3.2 The Value of Explanation

The core value of this chapter is in the manner in which it contextualises CSR as a political-economic phenomenon that has implications for the way in which we think about justice. The thesis argues that the political and economic choices encapsulated by CSR necessitate attention from the normative point of view of distributive justice. In order to think through what the synthesis of these areas (CSR and distributive justice) might imply, it is important to gain a historically contextualised understanding of the way in which CSR emerged, which was done in chapter two, as well as a similarly contextualised theoretical explanation for the emergence of CSR.

As well as the value of explanation in its own right, this explanation is also important in the context of the later ideas articulated in the thesis about CSR and global distributive justice. As is discussed in chapter six, the thesis argues that a concessive view of justice is valuable in relation to corporations – that is, a view that concedes to certain facts and realities about the political-economic context within which corporations operate. In order to do this, the ideas discussed in chapter six, under the heading of “concessive theory” make reference to conventional processes of CSR yet also seek to develop the proposals that go beyond current practices that are, as is discussed in this chapter, shaped by a hegemonic control of global capitalism. Thus the role of this chapter is to uncover reasons for CSR and its form in order that it can be established what is necessary to concede within concessive theory.

3.3 Embedded Liberalism and the Polanyian Double Movement

It is argued by many that CSR is a manifestation of the globalisation of embedded liberalism, or a global social market paradigm. In terms of the fact of the existence of CSR, the thesis draws from Polanyian-influenced ideas about embedded liberalism and the double movement, as well as drawing from Ruggie's ideas about the globalisation of embedded liberalism. It is argued in this chapter that CSR is indicative of the widespread recognition on the part of global corporations, as well as other stakeholders, that the pursuit of corporate activity without due regard to the social consequences of such activity is unsustainable in the long term. As such, the emergence of CSR is usefully understood as a reaction to a neo-Polanyian double movement that served to re-embed the economic activities of global corporations into society. This section provides a description and discussion of embedded liberalism and the Polanyian double movement.

3.3.1 Embedded Liberalism

The embedded liberalism compromise is the idea that economic liberalisation ought to be embedded in a social community (see Ruggie 1982). In the post-war period of the twentieth century, state based government was key to this process of stabilisation in the provision of social safety nets and adjustment assistance, while pushing international liberalisation (Ruggie, 2003). In this context, the embedded liberalism compromise denotes the international financial regime embodied in the Bretton Woods institutions, and describes how this regime

enabled state governments to adapt domestically to the economic pressures and changes that came with the liberalization of their economies.

In this school of thought, there is an implicit assumption that (global) capitalism has widespread benefits for society, but that in conjunction with these benefits there are also harmful consequences which have to be tamed; thus there is a role for the state in providing measures of social protection. Justice, on this view, is dependent on a “settled and stable social bond” outside of which justice is thought unlikely to be possible (Devetak and Higgott, 1999: 487). Thus the sovereign state has the authority to ensure just distributive arrangements that are acceptable to citizens, who are linked by the common bond of community and territory.

According to Ruggie, this compromise was made possible because the post-war international economic/financial regime was founded upon international authority that was a fusion of power and legitimate social purpose (1982: 385). As long as there is broad underlying consensus about that social purpose, then international regimes are adaptable through this embedded liberal compromise:

If and as the concentration of economic power erodes, and the ‘strength’ of international regimes is sapped thereby, we may be sure that the instruments of regimes also will have to change. However, as long as purpose is held constant, there is no reason to suppose that the normative framework of regimes must change as well. In other words, referring back to our analytical components of international regimes, rules and procedures (instruments) would change but principles and norms (normative frameworks) would not (Ruggie, 1982: 384).

The institutions that enable and carry out the embedded liberal compromise are less important in and of themselves. As long as such institutions are underpinned by a broadly held social purpose, then the normative framework of the regime will be secure. Self-reflexivity is important in this respect. Regimes that are self-reflexive are conscious of the importance of norms and ideas within the institutions of the regime (Best, 2003: 368):

What was remarkable about this particular system was not simply its commitment to a different kind of social purpose, but also its self-conscious recognition of the centrality of a normative framework and its willingness to allow its central tensions to be negotiated on an ongoing basis (Best, 2003: 369).

The embedded liberal compromise that Ruggie developed in the early 1980s was essentially state-centric in character, and makes a clear differentiation between the domain of the national and that of the international. What this means is that while embedded liberalism was multilateral, that multilateralism was predicated on domestic interventionism, i.e. states were given the financial tools necessary “to pursue their own ‘favorite experiments’ within the wider global economy, through the provision of IMF credit, some exchange rate flexibility and the right to control capital flows” (Best, 2003: 365)². So, embedded liberalism empowered states to respond to international events to ensure domestic stability, but the normative basis of the international financial regime which underpinned this was derived from a shared sense of social purpose that was institutionalised multilaterally.

3.3.2 The Double Movement

² The phrase ‘favorite experiments’ is acknowledged by Best to be borrowed from Keynes.

In his explanation of the embedded liberal compromise, Ruggie uses Karl Polanyi's argument regarding the inevitability of a compromise that must emerge from a period of free market capitalism (Ruggie, 1982: 385-388). This is exemplified by the idea of the "double movement". Polanyi wrote about the "double movement" in the context of the social consequences of nineteenth century industrialisation and the collapse of the laissez-faire system, as well as the crises of the inter-war period (see Polanyi, 2001). His central point was that economic liberalization is always coupled with resistance to such liberalization, such that the economy must always be (or become – as a result of the double movement) *embedded* within society. He argued that the attempt to create a fully disembedded free market society (i.e. an economy with minimal governmental intervention) is impossible, since economic relations are intrinsically bound up in wider society (i.e. embedded):

Our thesis is that the idea of a self-adjusting market implies a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness (Polanyi, 2001: 3).

In the context of nineteenth century industrialising societies, the self-regulating market was the "common matrix" that shaped the other fundamental institutions of the international system (the balance of power, the gold standard and the liberal state). It was the self-regulating market that led to the collapse of this system:

...the origins of the cataclysm lay in the utopian endeavour of economic liberalism to set up a self-regulation market...All types of society are limited by economic factors. Nineteenth-century civilization alone was

economic in a different and distinctive sense, for it chose to base itself on a motive only rarely acknowledged as valid in the history of human societies, and certainly never before raised to the level of a justification of action and behaviour in everyday life, namely, gain. The self-regulating market system was uniquely derived from this principle (Ibid: 31).

Polanyi posited that there are three forms of integration in an economy that act to coordinate and structure economic activity – reciprocity, redistribution and exchange (Ibid: 45-58). Reciprocity indicates a social system that is organised around trust, in which there are symmetrical power relations between a society's members. A social system based on redistribution is one in which a central authority is required to make decisions regarding the distribution of resources, and consequently, general consent to this authority is required (Ibid; Watson, 2006: 438). Polanyi draws on ethnographic and anthropological studies to highlight the idea that “man's economy, as a rule, is submerged in his social relationships” (Polanyi, 2001: 48).

It was the dominance of the third form of integration, exchange, that Polanyi deemed problematic. He considered the dominance within a society of principles of gain or individual acquisitiveness (exchange relations) as inherently unsustainable in the long-term as it runs counter to humanity's natural inclination towards reciprocity and redistribution, *as well as* exchange. By elevating these principles to those of a foundational human characteristic, society comes to be run as an adjunct to the market and social relations become embedded in the economic system, rather than the other way around (Ibid: 60).

Essentially this means that economic decisions, at both individual and institutional levels, are made according to a principle of gain, rather than one that

prioritises reciprocity and redistribution. This is unsustainable because it construes human beings and the natural environment as commodities, when in fact they (land, labour, and money) are fictitious commodities (Block, 2001: xxv). This, it was argued by Polanyi, is the great error of modern economics – that land, labour and money are treated within economic theory as commodities like other products that can be bought or sold, when in fact “labour is simply the activity of human beings, land is subdivided nature, and the supply of money and credit in modern societies is necessarily shaped by government policies” (Ibid).

The demands that a free market economy makes on the individual are unsustainable in the long term, and the economic uncertainty generated by a self-regulated market, as well as the concomitant required flexibility of the individual in terms of his/her economic circumstances, are impossible burdens to bear (Block: xxxiv). As such, fictitious commodities will behave differently on the market than real ones and will bring into play the natural human inclination towards reciprocity and redistribution. This produces human tensions that the market alone cannot rectify and because of this unsustainability, there is an unavoidable role for the state to play in decision-making regarding how to regulate the market. The state then serves the broader social purpose of embedding the economy within society, in order both to tame the consequences of capitalism, and also to *sustain* capitalism.

This is what is known as the double movement, in which the moves towards a free-market economy are countered by resistance to that form of economic organisation. This resistance comes from all sections of society – and crucially is

bound to be supported by capitalist interests in society, given the need of capitalism for predictability and stability through forms of protection. The state introduces forms of social protection in order to protect its citizens, and societies move collectively to protect themselves, for example in trade unions (Munck, 2007: 34). Without this resistance, the consequences of a free market economy are stark.

Polanyi uses the example of the international gold standard and the resulting international chaos following its collapse to demonstrate this. The double movement does not seek to overthrow free-market capitalism, or provoke radical opposition to it. Instead, the double movement is a compromise that resolves the inherent tensions that come about as a result of the intermingling of the domestic and the international financial systems. Thus the economic relations that come about as a result of the liberalisation of an economy ought to be (and have to be) embedded within wider society. Once economic relations are embedded in society in this way, (and not the other way around), a society can function sustainably, and, according to the ideas of embedded liberalism, the social contract is intact. Thus the presumption of the principles of the free market that human beings naturally gravitate only towards individual gain and acquisitiveness is disputed by the Polanyian idea that capitalism requires other principles in order to function – those of redistribution and reciprocity.

There is an interesting link in this idea to what Cohen argues about justice and societal ethos (Cohen, 1997 and 2008). Although this will be discussed in more detail in chapter five, it is important to note here that the argument that a

sustainable capitalist society depends on the propensity of human beings to behave fairly and to support a system that enables justice is similar to ideas put forward most prominently by Cohen, that argue that justice is about more than fair rules, it is also about fair individual choices within those rules. Thus the idea that societies resist the progression of free market capitalism is linked to distributive justice ideas about the necessity of an ethos of justice amongst members of a society. Such an ethos is made possible precisely because, on the Polanyian understanding, historically many societies have been organised around reciprocal or redistributive principles, rather than solely around exchange relations.

To summarise: the embedded liberal compromise denotes the international economic regime that enabled states to liberalise their economies whilst cushioning themselves from the external shocks of that liberalisation domestically; this was agreed in a multilateral framework (Bretton Woods), and was underpinned by a shared understanding of social norms. This is based on Polanyi's work on the "double movement" in which a society inevitably moves to resist the destruction of a free market by protecting itself.

3.4 The Globalisation of Embedded Liberalism

In the context of contemporary processes of globalisation, the primary difficulty with embedded liberalism as laid out above is that it is based on a national/international dichotomy. Globalisation disrupts the embedded liberal compromise by transcending the state-centric notions on which it is based. While

the embedded liberal compromise works from the premise that the domestic state, in conjunction with international financial institutions, can resolve the problems associated with the liberalisation of an economy, contemporary processes of globalisation problematise this assumption of state-centrism. This section first details the globalisation of embedded liberalism, and the neo-Polanyian double movement this prompted, highlighting the impact that contemporary globalisation has had on the international institutional structures of governance, and the forms of resistance to this change that have emerged. The section discusses CSR as a *reaction* to this double movement.

3.4.1 Globalisation of Embedded Liberalism

On the view exalted by the idea of embedded liberalism, globalisation means that the sphere of the political is extended beyond (above, below and between) the state; territory is not the sole means of political organisation (associated with Westphalian sovereignty) and the state is surrounded by a variety of different (political) actors that exist on multiple levels of governance, other than that of the state. While the state is still responsible in many respects for the development of, for example, social protection, its ability to respond to certain global political, economic and social events and processes is altered by the presence of non-state, supra-state, or sub-state actors. Global corporations, in this context, are seen as being one of a number of different actors operating at the global political and economic level that are involved in the creation and implementation of rules, standards and norms that work to affect people's lives in a serious way.

Essentially, globalisation involves the emergence of certain economic, social and political processes that exert pressure on the state in two different directions. On the one hand, there is the move towards the liberalisation of the domestic economy. Broadly the actors involved in this pressure have (historically) been international financial institutions, global corporations and states that have pursued such economic policies both domestically and internationally. In the context of this pressure, the provision of social protection has become a question for “the market”. The market, and the internationally mobile capital that flows through it, as constructed by the powerful actors listed above, is unrestricted by the territorial boundaries that the state must operate under, and is free from the obligations that come with the political community of the state. This rolling back of the state was exemplified internationally by policies such as IMF structural adjustment programmes, and domestically through governments following Thatcherite and Reaganite principles. This is based on the idea that the self-regulating market will inevitably produce just outcomes, and that the role of the state ought to be minimal.

On the other hand, globalisation also involves a push from civil society actors that act to tame the freedoms of the market, as exemplified by the actors listed above, to introduce a form of regulation of their behaviour. This push occurs in many different ways and in many different arenas: the various mass protests at meetings of international organisations (in Seattle in 1999, Washington 2000 and 2002, Genoa in 2002, London, 2009 for example), the creation of alternative policy forums such as the World Social Forum or the European Social Forum, and the development of partnerships between nongovernmental organisations

and corporations. These forms of resistance to globalising processes are indicative of a growing belief that the unfettered mobility and power of capital is something that needs to be addressed through the emergence of a strengthened global civil society. Such resistance is about the development and creation of alternative policy frameworks to resolve questions of poverty, socio-economic development and justice.

Problematic here is the lumping together of a broad church of different organisations, groups and movements, all of whom have different specific agendas and different modes of operation. Additionally, as Munck points out, only a North Atlanticist/Eurocentric perspective would assert that anti-globalisation protest began in Seattle in 1999 (Munck, 2007: 57-8). However, with this caveat in mind, the point is that in the late 1990s and early 2000s, there emerged a mobilisation of a significant body of non-state actors who were motivated by the sentiment that neoliberal globalisation was unjust, and ought to be changed. Central to this, for this analysis, is that these actors are not state-bound, yet many aim to develop a form of protection of individuals and communities that might be thought to be the duty of the state. In this sense, a consequence of the drive towards neoliberalism during this period was that there emerged a resistance that aims to undermine some of the fundamental principles of neoliberalism

In the context of global corporations, contemporary processes of globalisation mean that they are increasingly being regulated in ways other than state-based regulation. The various actors involved in the regulation of corporations are civil

society organisations, international organisations, business associations, and corporations themselves. Thus the importance of contemporary processes of globalisation to global corporations is twofold – on the one hand, globalisation has aided and abetted the increasingly powerful position of the global corporation (in the sense of the prevailing neoliberal policies of the latter half of the twentieth century), yet on the other, globalisation has given rise to a situation in which there is now a multiplicity of actors involved in drawing attention to, and ultimately developing a new type of regulation of global corporations.

3.4.2 Resistance: A Neo-Polanyian Double Movement

In terms of developing a Polanyian explanation for the emergence of CSR, the thought is that its development was an inevitability that was produced by the pursuit and implementation of free market principles on an international level. Because a society dominated by principles of neoliberalism works from the premise that individual acquisitiveness is a basic human characteristic, a view that Polanyi deems to be incorrect, then a form of resistance will ultimately seek to rectify the dominance of such an idea. The drive towards neoliberal policies in the 1980s and 1990s created the institutional structure that enabled the elevation of individual acquisitiveness above other human characteristics.

On a Polanyian view, the behaviour of individuals is inextricably linked to the institutional arrangements that surround them. So, the institutional arrangements of that time pushed neoliberal economic policies into a dominant position, in which the self-regulating market triumphed over state regulation, which had the subsequent effect of promoting and legitimating the acquisitive behaviour of

individuals. Thus the process is self-replicating: the creation of economic arrangements that privilege principles of exchange over those of redistribution and reciprocity affects individuals and the general ethos of wider society so as to privilege the values of individualism over those of reciprocity and redistribution. Again, as mentioned above, a similar argument is made within distributive justice literature – if an ethos of acquisitiveness prevails, justice is not possible, because an inclination towards acquisitiveness inevitably negatively impacts upon the least well off in society.

However, as described above, the Polanyian argument suggests that because of the inherent and unavoidable embeddedness of the economy within social relations, the domination of such principles is unsustainable. Society is not guided only by principles of exchange; society also consists of community, trust, reciprocity etc. As such, prices are not just determined by market value, prices also have a social value. In this sense, a neoliberal agenda contains within it the seeds of its own downfall: the disembedding of the economy from wider society erodes these values, and demonstrates a fundamental contradiction in the construction of a market economy. Hence the Polanyian belief that “laissez-faire was planned” (Block, 2001: xxvii). Capitalism *requires* societal values such as trust and reciprocity, and institutions such as family and community, as they are what ensure the stability necessary for capitalism to develop. Yet the pursuit of individual acquisition is anathema to this stability because it impairs individuals being socialised into these institutions.

In the era then of post-Washington consensus, and post-Battle of Seattle, it seems

a form of resistance has emerged to the neoliberal globalising policies of the last twenty or so years of the twentieth century. To the extent that certain elements of global civil society have pushed the CSR agenda after a period in which the unsustainability of neoliberalism had become evident (for example the financial crises that occurred in the late 1990s in Argentina, Malaysia, India, Indonesia etc), it could be said that CSR is representative of the resistance to neoliberal policies. However, it is more accurate to explain the emergence of CSR as a *reaction* to the resistance of neoliberalism. This distinction will be drawn out in the remainder of this section.

3.4.3 CSR as a Reaction to Neo-Polanyian Resistance

CSR cannot be explained as a neo-Polanyian form of resistance to neoliberal economic globalisation because it lacks the enforcement capacity of a sovereign state. CSR is not a coherent policy adopted universally in a given area or a given industry; instead it is pick-and-choose approach to the wider responsibilities that a corporation has, or indeed the responsibilities a corporation decides it has, to society. Granted, some newer initiatives, such as the Global Compact, do purport to introduce a greater coherence to CSR in that it is overseen by the UN. However, lacking as it is in the sovereign authority of the state, the form of social protection offered by CSR policies falls far short of a Polanyian ideal of state-based welfare provision.

It is more accurate to describe CSR as a *reaction* to the resistance that emerged – or a way of answering the resistance – because CSR has not fundamentally changed much that is of significance to the system that made it necessary. In this

sense, the emergence of CSR is Polanyian because CSR policies support the capitalist system – they do not entail its complete reformation – and to a great extent CSR came about because of the unsustainability of the manner in which many global corporations were operating. CSR, then, involves an acknowledgement on the part of corporations of this unsustainability. The position taken by the thesis is that a Polanyian account offers a useful explanation for *why* CSR has emerged, in the sense of why a discourse about the social responsibilities of corporations exists in this particular historical period. The remainder of this section focuses on this former point.

The relevance of Polanyi's argument to contemporary globalized circumstances is acknowledged by many (see for example Birchfield 1999; Stiglitz 2001; Watson 2006). Indeed, Ruggie has personally pursued the CSR project within the Global Compact as the globalisation of embedded liberalism (see Ruggie 1997 and 2003). Ruggie's argument runs that CSR represents a harnessing of the power of globalisation to embed the global market within shared social values and institutional practices (2003: 94-95). The social compact of liberal states is threatened by the vagaries of globalisation (Devetak and Higgott, 1999: 8). On a Polanyian view CSR is seen by Ruggie, as well as others (see for example O'Laughlin 2008 and Levy and Kaplan, 2007) to be one way in which social protection can be maintained, albeit in a wholly different way to how embedded liberalism as originally conceived would envisage, and, indeed, how a Polanyian idea of the double movement would predict.

On this view then, CSR can be a positive process of private sector involvement in governance that incorporates the global social values of human rights, labour rights, environmental standards etc. with the freedom of a global market, and in which the corporate sector balances out its expanded array of rights by institutionalizing its social responsibilities. Although this view is tempered with the caveat that this project of the global public domain is problematic and difficult – “[A]nd so at the global level there will be many more zigs, many more zags, and quite probably many more failures (Ruggie, 2003: 117) – CSR is seen by many to offer one of the best ways of taming the bads of globalisation in a manner that accommodates the global market.

However, CSR as currently constituted differs in some important ways from the ideas that Polanyi discussed, such that it can more accurately be described as Neo-Polanyian. There are three points to make in this regard. Firstly, in the context of contemporary processes of globalisation, the emergence of a strictly Polanyian resistance to the policies of neoliberal economic globalisation was rendered virtually impossible because of the position of the state as a result of these policies. However, what differentiates this period of globalisation is that the push towards a minimal state emanated from elements/actors that were unconstrained by *territorial* boundaries, unlike the state whose powers are restricted to the territory over which it has sovereignty (Scholte, 2005). The state’s ability to provide social protection against the ill-effects of economic liberalisation was impaired because the drive towards that liberalisation was supra-territorial in nature.

Secondly, and relatedly, CSR policies are representative of a new type of politics that is part and parcel of globalisation. As outlined above, contemporary processes of globalisation mean that politics takes place in political arenas other than that of the state, and that social relations extend across territorial boundaries. Because of the difficulties that globalisation presents for the state, in the sense of globalisation being an essentially supra-territorial phenomenon and the state being bounded by territory, the adoption of self-regulation measures by political actors other than the state was in many ways inevitable. In the Polanyian sense, the inevitability arose because of the pursuit of neoliberalism during the latter half of the twentieth century and the perceived threat such policies presented to the stability of global capitalism. However, it is neo-Polanyian because of the incorporation of different political actors into the provision of a form of social protection. As Levy and Kaplan mention, this form of social protection is notable chiefly for its reliance on the private realm rather than the state (2007: 18).

Thirdly, CSR operates around an idea of consensus or partnership between actors (stakeholders) from public and private sectors. While Polanyi spoke of *counter-movements* that often ended up being defeated by increases in repressive state power (Block, 2007: 7), CSR and the importance given to consensus and inclusion of stakeholders implies the subsuming of such counter-movements into partnership with those who generate the first movement (the state and corporation). As Block argues:

The neo-Polanyian approach conceptualizes modern economies as loosely coupled systems with many buffers and a variety of backup

mechanisms. A catastrophic failure that spreads from one part of the economy to others is still possible, but such events are unlikely and unusual. The more typical pattern is that economic and political actors find ways to keep strains or difficulties in one part of the economic mechanism from having a dramatic impact elsewhere. This reflects the cumulative impact of protective countermovements and the high cost to state officials of presiding over economic meltdowns (2007: 7-8).

As such, CSR is a neo-Polanyian compromise to neoliberalism. While civil society actors could, and many do, push for more radical reforms of global capitalism, the CSR agenda is not designed to change the powerful position of the global corporations it addresses itself to, nor to address some of the fundamental assumptions of global capitalism that underpin it. Created (albeit for the most part in partnership with civil society) by corporations themselves, CSR is hardly a counter-movement, but does represent an acknowledgement that neoliberalism is unsustainable.

A Polanyian perspective on the position of global corporations offers a coherent explanation as to why the question of CSR emerged when it did. The response offered by a Polanyian influenced explanation is that this happened because of the unsustainability of neoliberal economic policies pursued in the 1980s and 1990s, and the inevitable resistance to such policies, in the form of market collapse and civil society activism. It was argued in this section that CSR is a reaction to such resistance. However, this explanation does not tell us why CSR now takes the form it does. For example, a Polanyian interpretation would suggest that corporate reaction to resistance might have come in the form of renewed enthusiasm for multilateral or state-based regulation, or even a curtailment of global corporate expansion such that corporate activity can be more easily regulated. However, this is not what happened. Thus, the thesis turns to a

different account in order to develop an explanation for the form and content that CSR takes.

3.5 A Neo-Gramscian Explanation: CSR as a Regime of Accumulation

This section draws on Gramscian ideas related to hegemonic control and regimes of accumulation that have been used by some authors to understand and interpret CSR. It is argued in this section that Gramscian influenced ideas have more to offer in terms of understanding why CSR has taken the form it has, and the sorts of limitations this form puts on the wider question of what a just corporation is. This contention gives further weight to the contention that corporations are intrinsically involved in the systemic harm and profound effects that the thesis argues are central to a question of global distributive justice.

3.5.1 CSR as a Regime of Accumulation

A neo-Gramscian explanation of the emergence of CSR construes CSR as the orthodoxy by which a regime of accumulation consolidates itself further. The “social purposes” from which the regime of CSR derives its authority are seen on this view to legitimate and endorse the profit-making motives of global capitalism. This critique of CSR draws on Gramscian ideas of the hegemonic bloc of global capitalism. A hegemonic order is one where “consent rather than coercion, primarily characterised the relations between classes, and between the state and civil society” (Gill and Law: 1989: 476); a new historic bloc such as this “needs persuasive ideas and arguments ... which build on and catalyse its political networks and organisations” (Ibid). As such, the regime of accumulation

promoted by the historic bloc of global capitalism means a lot more than the advance of capitalist interests across national boundaries; it also involves the legitimisation of certain social forces. While Ruggie construes the post-war international order as an embedded liberal compromise, Gill and Law view it as a period in which leading elements in this new alliance of social forces sought to internationalise a certain type of regime of accumulation.

There is obvious overlap between the Polanyian and Gramscian views - they both acknowledge the commodification of nature and labour as problematic (Gill, 2003: 125; Block, 2001: xxv), and both deem the logic of neoliberalism to be contradictory (Gill, 2003: 125; Watson, 2006: 152). However, as mentioned above, a Gramscian influenced perspective usefully draws attention to the form and content of CSR policies, which contribute towards developing a critical assessment of this phenomenon. Prior to the application of a Gramscian critique to CSR, the section offers some background information on the central ideas being utilised here.

In the context of the neoliberal period of the 1980s and 1990s, as discussed in chapter two, the hegemonic bloc of global capitalism was reinforced by the elevation of the principles of the free market to those of basic organising principles of society during this period. On this view, the orthodoxy of the market reduced state capacity to provide social protection and corporations were afforded an increased level of power through their position of dominance in the market. This has been connected by Gill to an idea of “new constitutionalism”

(1995), which denotes the moves to extend and deepen the power of capital in public and private sectors:

This discourse serves to protect the privileges of the dominant agents in the new forms of oligiopolistic competition in the 1980s, and to restrain future governments from intervening to undermine such privileges. This is also linked to attempts to privilege business and business-oriented ideas in parts of the public sector (which may be difficult to privatise such as health and education), whilst decreasing the accountability of parts of the public sector. (Gill, 1995: 78).

This is related to the Gramscian concept of the “extended state”, in which the state equates to both political society and civil society. The privileging of corporate ideas in society leads to civil society becoming more market-driven, and organised around notions of individualism, competition and disciplinary political culture and society (Ibid: 85). In this respect, while CSR could be construed to be the “human face of capitalism”, a Gramscian view would see CSR as representative of the shift from one type of regime of accumulation to another. While a Polanyian view would be that the pursuit of neoliberal policies inevitably leads to forms of resistance of such policies and that CSR is a reaction to that resistance, a Gramscian view would see CSR as a further step in the consolidation of capitalist interests.

It is in this regard – the consolidation of capitalist interests - that the Gramscian critique of CSR is most useful, by drawing attention to the form and content CSR takes, and the inherent limitations therein. By possibly enhancing, and doing nothing to challenge, the profit-making goals of the global capitalist order, CSR partially represents the exertion of hegemonic control of capitalism over global society. Thus, in conventional CSR agendas, an equation is made between the

standard processes of CSR and the just or ethical corporation. This direct equation is problematic, because, as O’Laughlin points out, CSR is contestable and contested: “...the fact that a corporation claims that a particular activity has been undertaken as a reflection of its ethical concerns is no guarantee that it is contributing either to the general public good or to the well-being of the poor” (2008: 948). A Gramscian critique of CSR, which draws attention to the social forces underlying it, is useful in scrutinizing the form it has taken and the manner in which this form could be said to be detrimental to the overall project of the just corporation.

3.5.2 Consolidating the Interests of Capital: CSR as an Orthodoxy

The remainder of this section presents four Gramscian-influenced critiques of CSR that have emerged from CSR literature. Many of these critiques will be taken up again further on in the thesis and their relationship to global distributive justice made clearer. However, the overarching criticism presented here is that the manner in which CSR is discussed, debated and developed has become something of an orthodoxy that inherently limits the idea of what it means for a corporation to be just or ethical. As Blowfield discusses, the orthodoxy of CSR is comprised of voluntary standards, the measurement of performance in relation to those standards, the concept of the stakeholder, and multi-sectoral partnerships as a form of governance of business. (Blowfield, 2005b: 174). Although there is criticism and debate about these elements of CSR, this generally involves a debate and analysis over the “how to” of CSR, rather than a substantial debate about the structural conditions that promote and enable CSR (Ibid). Thus the idea of the just corporation is often presented as a technical question of how to do

CSR better, or more efficiently and less often is a question of ethical or normative consideration.

The process, form and content of CSR are symbolic of hegemonic control of global capital and there is little room in conventional CSR agendas for questioning the social forces underpinning that control. Below are four ways in which this control manifests itself. In relation to justice, this is problematic because it cannot be assumed that the limits of justice are coterminous with the limits of market rationality (nor can it be assumed that they are coterminous with the state). As Levy and Kaplan state, “Typically, business agrees to concessions that modify corporate practices at the margin, but which do not challenge the fundamentals of managerial authority or market rationality” (2007: 20). Gramscian ideas open up a field of critique that interrogates this assumption.

First, to a great extent practitioners and supporters of CSR control the scope of its agenda. By defining the questions and issues that CSR deals with, and the manner in which it deals with them, CSR can be seen as a mechanism of global capitalism that legitimises the values of individualism, consumerism and accumulation. What this means is that the CSR agenda is never about any root-and-branch transformation of the system of global capitalism. For instance, there is little mention within the literature on CSR on fairer methods of taxation and redistribution of profits; additionally, as Jenkins notes, transfer pricing, tax avoidance, the abuse of market power and the poverty impacts of business activities are not matters for discussion in the CSR agenda (Jenkins/UNRISD, 2001: 528). Wider questions surrounding the reduction of state power with

respect to corporations are similarly not addressed, nor are the ethical implications of profit-accumulation as a result of CSR policies. Control of the scope of the CSR agenda inherently limits the extent to which we can call CSR, or a specific corporation that practices CSR, just or ethical.

The second critique is to do with consensus. As Blowfield has discussed, this hegemonic hold that capitalist interests have on the CSR agenda relies on the existence of consensus within the debate. The idea is that by purportedly giving all stakeholders a say in the discussion, the “right” answer will emerge. As Blowfield puts it:

[consensus] allows CSR to present opposing ideas as coherent and unproblematic. It also allows companies to claim to engage in complex issues such as sustainability, environmental management, social justice, animal rights, governance and cultural diversity without any real discussion or recognition of the possibility that aspects of such issues might be ideationally or axiologically contradictory (2005b: 177).

In this sense, in striving to establish a consensus on “best practice”, CSR debates are restricted to an uncritical approach, which takes as given the structural conditions that have brought it about. While the neo-Polanyian idea about consensus discussed above values consensus as a kind of back-up mechanism for the structures of global capitalism, the idea here is that consensus in the debate about CSR masks the inherent limitations and contestability of the subject matter. Blowfield makes a similar point about the idea of the stakeholder, and related concepts of partnership, dialogue and engagement, as well as the tools that are used to implement the CSR agenda (for e.g. auditing, reporting, verification and labelling), in that such analysis tells us nothing about the underlying power dynamics involved in these relationships (Ibid: 180). Similarly,

Newell remarks that in its efforts to mask conflict, CSR “underestimates the importance of power and resistance in enabling or preventing outcomes favourable to the poor” (2005: 556). By establishing an “inclusive” partnership, the agenda can easily be dictated by the most powerful stakeholders, and doesn’t address which groups are in fact excluded, and how they came to be excluded – and in many instances it would seem that such exclusion is inherently part of what it is to be a just corporation.

As such, by making consensus and the absence of conflict a central facet of the CSR agenda, and by providing intellectual and moral leadership, the structural conditions that confer power on to those who control that agenda are reinforced. In this way, the CSR process is unavoidably politicised. As Levy and Kaplan state:

[...] the Gramscian concept of hegemony suggests that constructing this consensus is a political project of building alliances, strategic negotiation, and public debates. The stability of a governance system relies on a combination of coercive power, economic incentives, and normative and cognitive frames that coordinate perceptions of interest. The particular practices of CSR that emerge around an issue therefore reflect the balance of forces among competing interest groups (2007: 19-20).

Thus rather than being about finding ethical or just solutions to the problems of corporate activity, the CSR process is shaped by the social forces underpinning it, and outcomes reflect the power relations of such forces. This criticism will be taken up again specifically in chapter six, when the importance of open and fair deliberation and consultation in relation to CSR and global distributive justice is highlighted.

Following on from this, the third critique is to do with these structural conditions, and the way in which they are perceived to be inordinately detrimental to the position of women, a critique that has been put forward by critical/Marxist feminists. A gendered dimension to this explanation of CSR would argue that in replicating the structural conditions of global capitalism, CSR policies do nothing to improve the position of women. Taking the view that CSR represents the values and power of global capitalism and neoliberal ideology in which the market is privileged and institutionalised, CSR is a means by which market dominated governance structures establish internal regulatory mechanisms (e.g. codes of conduct), thereby limiting the external scrutiny of the production regimes of transnational capital and its impact on labour and the environment (Rai, 2004: 582). On this basis, processes of globalisation and the operations of global corporations in the context of such processes have an inordinately detrimental effect upon the wellbeing and position of women.

This type of gendered analysis of CSR would challenge the nature of market-based solutions to social and political problems. Such solutions are inherently problematic because they reproduce structures of gender inequality. A good example of this is the case of homeworkers, a disproportionate share of whom are women. Many codes of conduct take jobs away from homeworkers because companies are unable to oversee such work, regardless of the fact that homeworkers' incomes make a crucial contribution to family survival. In replicating the structures of global capitalism, CSR reinforces the fact that capitalism does not place an economic value on the traditional role of women in the home and accords a favourable position to corporations at the expense of the

state and redistribution policies thus undermining the position of women (Meyer and Pruegl, 1999: 15)

More broadly, the fourth critique is that by sticking to this uncritical approach, advocates of CSR retain a stranglehold on what exactly constitutes socially responsible behaviour on the part of corporations, thus also retaining control over the very meaning of (corporate) ethics itself, and how the role of the private sector in contemporary global political society is understood (Blowfield, 2005b: 174-177). This view problematises the conception of CSR being a self-reflexive regime in the Polanyian sense. According to Best, regimes have to be self-reflexive in order to work (Best, 2003: 368). If the ideas of “stakeholder dialogue” and “partnership” can be reduced to labels that merely provide cover for the deeper levels of control that the CSR agenda has over conceptions of global ethics or justice, then it would seem on this view that CSR offers limited possibilities in terms of seeking to rectify the social and environmental problems of global capitalism.

Thus, in establishing this need for consensus, partnership and dialogue, this fourth critique posits that there is a deeper process of the commodification of ethics inherent in CSR as a result of its form and content. By making CSR policies part of brand value, the notion of what it means to be ethical is made part of the commercial value of a product; hence the vast resources devoted to the publication of glossy brochures and advanced websites for the CSR division of many global corporations. Thus ethics is something that can be bought and sold like any other product. However, presumably the choice about whether to

participate in this form of ethics and the socio-economic resources required to make this choice, are constrained along the lines of gender, race, class and ethnicity (Barnett et al, 2005: 41). Thus it becomes more possible for certain sectors of society to make ethical choices, and participation in ethics is inherently limited. Furthermore, the possibility that CSR is not ethical, or the possibility that a socially responsible corporation could behave differently – or even the possibility that what constitutes ethical behaviour on the part of a corporation is something *for discussion* – is not allowed for. This process positions the individual as ethical consumer, the corporation as ethical actor and establishes a clear relationship between both that is objectively “good”. In so doing, the values of capitalism are consolidated.

In summary, this section has utilised Gramscian ideas related to the hegemonic control of global capital to develop a critique of the form, content and process of CSR. The central idea is that the control exerted on CSR renders it an orthodoxy by which the idea of the just or ethical corporation is inherently limited. The section detailed four ways in which this happens. From a Gramscian point of view, this commodification of ethics is problematic because it is representative of the exertion of hegemonic control of capital. However, if the overall process of CSR is indeed limited by market rationality, as the critique above has argued, then this is presumably also a difficulty for the Polanyian explanation detailed above. Part of the Polanyian critique is that unfettered capitalism leads to the prioritisation of the values of exchange, rather than those of redistribution and reciprocity. Thus, if the agenda, tools and process of CSR is limited by the extent to which it adds (commercial) value, then it is likely that it will lead to further

disembedding of economic activity from society, on the Polanyian understanding at least. As such, what these Gramscian ideas illuminate is that the way in which CSR is practiced renders it inadequate as a reaction to a Polanyian-type resistance of global capitalism.

3.6 Conclusion

This chapter has presented an explanation for CSR using insights from both Polanyian and Gramscian perspectives. In the first instance, Polanyian ideas were argued to be useful to understanding why the phenomenon of CSR has emerged, or why the question of what it means for a corporation to be socially responsible emerged when it did. What a Polanyian perspective tells us in this regard is that the emergence of CSR is a reaction to the inevitable resistance to unfettered capitalism; such resistance comes about as result of the disembedding of economic activity from wider society that is alleged to part of the process of global capitalism. As such, it was argued that resistance, in the form of civil society activism as well as various financial crises of the late 1990s, was met with the elevation of the question of what it means for a corporation to behave responsibly; CSR is the reaction to this increasingly prominent question.

Moving on to the Gramscian element of the explanation, the chapter argued that Gramsci's ideas about the hegemonic control of global capitalism open up a useful area of critique in relation to the form and content that the CSR process has taken. In this regard, it was argued that the agenda and scope of CSR, as well as the process and tools used to implement it, are a manifestation of the

hegemonic control that global capitalism has on the CSR process. As such, it was argued that in terms of the issues that are part of the CSR agenda, those who are deemed eligible to participate in it, as well as the way in which CSR is practiced, outcomes are determined by the underlying power dynamics that are a part of global capitalism.

In terms of how this explanation is important for subsequent chapters that discuss the question of global distributive justice in relation to global corporations, these Polanyian and Gramscian insights open up a critique that diverges from a discourse that is dominated by the technical question of how to do CSR better or more efficiently. These insights are most particularly important in terms of the ideas about justice that are discussed in chapter six under the heading of “concessive theory”. In this, the thesis moves from an ideal view of justice and corporations, to a view that concedes to certain facts; in this instance, such facts are those of the existence of global capitalism and global corporations. By developing an understanding of CSR as intrinsically related to, and in many ways shaped by, global capitalism – both in the Polanyian sense of why CSR exists, as well as in the Gramscian sense of why it takes the form it does – the ideas articulated as concessive theory aim to strike a balance between the reality of CSR as it is now, as well as the normative demands that ought to be made on global corporations. So although the Gramscian account construes CSR an instance of global capitalism in which systemic harm is a feature, the core aim of the thesis to develop a proposal that is to some degree a feasible one, necessitates that such a proposal is set within that system. As such, within the concessive

theory proposed, the constraints of the process of CSR are acknowledged and an attempt is made to reform it from within.

4: Statist Conceptions of Global Distributive Justice

4.1 Introduction

The previous two chapters of the thesis focused on CSR in two ways. Chapter two provided details on the historical emergence of the phenomenon of CSR from its historical progression from corporate philanthropy, through attempts at multilateral regulation, to its current guise as a project of self-regulation of global corporations in partnership with multiple global political actors. Chapter three developed an explanation for the emergence of CSR, as well as the form and content of CSR policies that drew from Polanyian and Gramscian insights about global capitalism and its sustainability.

The thesis now moves to the political theory element of the argument, the focus being on statist conceptions of global distributive justice, all of which argue that there is no claim of principles of distributive justice beyond the domestic state. Bearing in mind the overall aim of the thesis to synthesise these two areas, it should be noted at the outset that the question of CSR has not been dealt with specifically by political theory literature. As such, this chapter and the next focus on the manner in which the idea of global distributive justice has been discussed within global political theory literature.

The thesis views global corporations as institutions that have a profound effect on people's life chances, and as such there is a strong normative case for

corporations to be subject to principles of distributive justice. The core part of this argument is that it is not sufficient to discount global corporations' activities because they do not fit in to national-international, or public-private dichotomies that surround many views of global justice. What the 'profound effects' idea highlights is that corporations' role in the articulation and development of norms, rules and standards of social responsibility are of concern to a conception of global distributive justice. Thus this chapter builds on the overall argument of the thesis by demonstrating why conceptions of global distributive justice that are restricted to the state are not capable or adequate to deal with the complexities of the political-economic environment within which global corporations operate.

In this role, a corporation can significantly shape an individual's life chances. This "profound effect" could mean very different things, on a spectrum of positive to negative. For instance, directors and shareholders of a corporation can also experience these "profound effects" in the sense of their income and wealth being determined to a great extent by the behaviour of the corporation. What is of concern for this thesis are the groups of people who experience such effects, but who do not have the opportunity to have a say in such activities.

This chapter critiques statist articulations of global justice that have emerged within normative political theory. Such views have centred on the importance of citizenship, national self-determination and sovereignty in relation to distributive justice. This chapter outlines these views, i.e. that distributive justice is best restricted to a state, and deals with three different justifications that are given for the restriction of principles of distributive justice to a territorially bounded

community, namely citizenship, national self-determination and sovereignty. Although there is considerable overlap between these categories, for the purposes of clarity they serve to highlight three significant ways of thinking about global justice. The following section details how Rawls conceives of distributive justice as being largely dependent on citizenship and develops a critique of the Rawlsian approach to justice beyond the domestic sphere. The chapter then outlines and critiques Miller's ideas regarding the importance of the nation, and national self-determination, with respect to global justice. The final section discusses Nagel's argument in relation to sovereignty and global justice.

In relation to all three views on distributive justice, critiques are divided into objections to both normative and empirical claims. Generally, this means that various arguments are disputed on the basis that they are both normatively problematic, as well as empirically incorrect. What all three categories have in common is that the justifications put forward by each way of thinking are subject to challenge and contestation in the context of contemporary globalisation, and that ultimately these conceptions of global justice are lacking in this context.

It is important to note here that all these views (citizenship, national self-determination and sovereignty) acknowledge the value of just conduct between peoples or states, meaning none of them view the state as an entirely independent and isolated entity. What sets them out from cosmopolitan views is the thought that there are no redistributive responsibilities beyond the state. All approaches advocate some humanitarian duties and the securing of basic human rights across

states. However, it is in the justification of these approaches that key differences emerge.

4.2 Distributive Justice and Citizenship

The key problem surrounding the development of a theory of global distributive justice is the reconciliation of the position of the state therein. Westphalian notions of the sovereign state as the primary unit of concern are challenged by contemporary processes of globalisation; thus theories of distributive justice that are limited by state, or territorial, boundaries are similarly challenged. The use of the state in thought about distributive justice differs widely, but despite this, the restriction of the bounds of justice to a territorial entity such as the state means that there are many circumstances that have their origin outside of state boundaries that seriously affect the type and quality of life an individual experiences; it is the argument of this thesis that global corporations are an example of this.

The citizenship category relates primarily to Rawls (1999, 2001b, 2005), and his treatment of justice beyond the domestic state. Rawls does not advocate the extension of principles of distributive justice to the international or global level; indeed, what he outlines in *Law of Peoples* are principles of just conduct between peoples or states. Distributive justice, for Rawls, has application only within the state, and the ties and binds of citizenship are what make this feasible. The first part of this section details in general terms the Rawlsian view on the limitation of distributive justice to citizens and the extension of that view to the

international realm in *Law of Peoples*; the second part of the section details and develops objections that have been made to Rawls's claims about international justice

4.2.1 Rawlsian Justice: From the Domestic to the International

The Rawlsian view is that justice in the domestic sphere and in the international sphere are two distinctly separate things. However, while the domestic and the international are viewed as being two separate entities, what applies in the sphere of the domestic has implications for that of the international. He states:

[...] it is important to see that the Law of Peoples is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples. I emphasize that, in developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of a *foreign policy* of a reasonably just *liberal* people (Rawls, 2001b: 9-10; emphasis in original).

So, distributive justice is fundamentally a matter for the state first, and what may be required in the sphere of the international will be influenced by the domestic.

It is the ties of citizenship that make the state the most feasible and desirable locus of distributive justice for Rawls. In a stable liberal democratic society (the ideal from which principles of distributive justice can be derived), Rawls argues that citizens can be assumed to hold differing "reasonable comprehensive doctrines", thus various moral, religious and philosophical viewpoints that result in the existence of a variety of possibly opposing world-views (2005: 58-66). However, when it comes to the matter of distributive justice, citizens are unified

by a common political conception of justice that is informed by “public reason”.

Public reason can be defined as:

Political society...has a way of formulating its plans, of putting its ends in an order of priority and of making its decisions accordingly. The way a political society does this is its reason; its ability to do these things is also its reason, though in a different sense: it is an intellectual and moral power, rooted in the capacities of its human members (Ibid: 212-213).

Public reason provides citizens with a fair standard of judgement by which principles of distributive justice can be justified amongst them. What binds public reason with a citizenry is the criterion of “reciprocity”; this view of fellow citizens as free and equal beings enables them to identify which reasonable principles, rules or standards might govern how others are treated, and how they themselves might expect to be treated:

[...] citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position (Ibid: 446)

There is thus important normative value in the restriction of the principles of distributive justice to citizens of a common state. By confining distributive justice in this manner, the principles are easily justifiable among citizens, even amongst those who may hold conflicting ideas about certain aspects of life. It is this ideal relation amongst citizenry that informs both the manner in which

principles of distributive justice are developed (for instance, the use of “the veil of ignorance”³), as well as what principles are decided upon (the redistributive aspect, as detailed in the second principle of justice⁴).

There is a well-established critique of the intricacies of what Rawls proposes for distributive justice and the domestic society (for key critiques and developments, see for example Cohen, 2000 and 2008; Dworkin, 2000; Nozick, 1974; Okin, 1989). However, what is of concern to this thesis is the manner in which these ideas influence and relate to his view of justice in the international sphere.

As mentioned above, this view of distributive justice within the domestic state informs the corresponding view of just conduct between peoples, as articulated in *Law of Peoples*. Given the relations that tie citizens together, which result in just societal arrangements for those who are part of the same society, there is no corresponding need beyond the level of the domestic to guarantee redistributive measures. This is the key difference between Rawls’s view of the domestic and the international in that his conception of justice at the international level begins from importantly different premises (Rawls, 2001b).

International justice, in the Rawlsian conception, is a more limited idea, as the assumption is that distributive justice has been addressed at the domestic level.

³ The veil of ignorance is a tool Rawls uses to describe the fairest way individuals might decide on principles of justice from the original position. Behind the veil of ignorance, individuals do not know the essential features of their place in the hypothetical society to which the principles of justice will apply - “his class position, or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like....This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances” (Rawls, 1999: 11).

⁴ The second principle states: Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (Rawls, 1999: 72)

As such, the priority in the thought experiment at the international level is the interests of *peoples*, not individuals (Rawls, 2001b: 32). The outcome, then, is a series of principles that govern relations *between* peoples. Within Rawls's 'Society of Peoples' there are two different types of societies – liberal and non-liberal but decent. He lists three other types of societies: outlaw states, societies burdened by unfavourable conditions, and benevolent absolutisms (Ibid: 3-4). The latter three are not taken to be part of the Society of Peoples and thus representation at the international level is by peoples of liberal societies, and non-liberal decent hierarchical societies. The thought here is that there are some types of society that are not necessarily liberal, but that the liberal requirement for toleration necessitates the inclusion of certain non-liberal societies in the *Law of Peoples*. This is a replication of the requirement for toleration at the domestic level - a liberal society is required to respect its members differing comprehensive doctrines, "provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason" (Ibid: 59). Similarly, as long as a society's basic institutions meet certain conditions of justice at the domestic level, they are deemed by Rawls to be decent, and thus equal participants in the *Law of Peoples* (Ibid: 59-60). Relations between liberal and non-liberal decent societies are encapsulated by a series of principles of good conduct (See Appendix 1).

Relations between liberal and non-liberal decent societies on the one hand, and societies burdened by unfavourable conditions on the other, are constituted by a duty of assistance. This is not a distributive principle, but instead is aimed at helping burdened societies to manage their own affairs reasonably and rationally

and eventually to become a member of the Society of Peoples (i.e. liberal, or non-liberal but decent) (Ibid: 106-113).

By restricting representation at the international level to peoples, rather than individuals, Rawls ensures that a moral primacy is accorded to peoples at the international level, and in matters of distributive justice, the key political community is assumed to be the state. In the context of the relationship between contemporary processes of globalization and theories of distributive justice, it is primarily this assumption that is problematic.

The justification Rawls gives for choosing peoples as the representative body in *Law of Peoples* is that at the level of the international, different fundamental interests have to be taken into account. At the domestic level, such fundamental interests are in primary social goods - rights, liberties, opportunities, and income and wealth, and residual self-respect (Rawls, 1999: 54). The purpose of a fair basic structure is to ensure that all individuals within a given society can achieve such primary goods. This justification is discussed in the next subsection.

Rawls's perspective on international justice is a statist account that restricts principles of distributive justice to a domestic society and limits consideration within the international realm to how states should interact with one another. As Rawls states, it is a theory for foreign policy, not global justice, and while he admits that it is perhaps oversimplified, he contends that it is also realistic in that it proceeds from how the world is (2001b: 82-83). The thesis develops a series of

normative and empirical critiques of Rawls's argument in the remainder of this section.

4.2.2 Normative Critique

Rawls's position on international justice is explicitly informed by his views on justice in the domestic realm, and the extension of the domestic to the international is the basis of the normative critique of Law of Peoples. This extension into the international realm is motivated by a view of individuals that accounts for their autonomy as "free and equal moral persons". On the basis that (liberal) states are able to take care of citizens' interests with respect to distributive justice at a domestic level, the task at an international level is to regulate inter-state (people) relations - thus *peoples* have different interests to *individuals*. Primarily, within the Society of Peoples, peoples' interests are to do with the protection of their political independence, culture and liberties in order to guarantee the security, territory and well-being of their citizens; as well as this, peoples also have an interest in recognising, and being recognised as, equal participants in the Society of Peoples (2001b: 34-35). Their interests are not to do with the distribution of primary social goods, because this is something that has taken place at the domestic level. This is a replication at the international level of the respect for the autonomous life plans and comprehensive doctrines of individuals at the domestic level; as such the right of peoples to be liberal, or non-liberal but decent, is allowed.

The justification for this replication is the value placed on toleration by liberalism, and Rawls's views on this seem are directly influenced by what is a

central concern to him in his domestic theory. In *Political Liberalism*, Rawls articulated what he deemed to be the central problem of political justice: “How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrines?” (2005: xxv). Thus in the international realm, what is of concern is how to reconcile the fact that people live in different states, with different cultures and different beliefs that will inevitably clash. His solution to this dilemma is guided by the principle of toleration that is at the core of domestic liberal theory. He states:

Just as a citizen in a liberal society must respect other persons' comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples. (Rawls, 1993: 43)

The purpose of *Law of Peoples*, then, is how to regulate or manage inter-state/inter-people relations. However, as Blake states, this is a flawed analogy, because it is not clear that there is such a direct route from the autonomy of individuals to the autonomy of states/peoples (2005: 37-38). Respecting the autonomy of individuals means giving them the right to pursue their own life plans free from unjustified coercion. However, respecting the autonomy of *peoples* to organise politically as they wish – and in so doing permitting some peoples to be governed in illiberal ways, and according equal respect to such peoples in the international original position – Rawls allows some individuals to deny the rights of autonomy to other individuals (Ibid).

Similarly, Caney (2005b: 81) argues that in pursuing the principle of toleration in this way, Rawls in actual fact allows for *intolerance* on the part of peoples, by allowing the majority in a collective unit to impose their values on individuals or minorities. Not only does this extension of toleration cause problems for the idea of toleration itself, it is also problematic for Rawls's conception of moral individualism. Allowing the autonomy of peoples at the international level implies collective responsibility on the part of those peoples for their fate – as will be discussed further below, Rawls works on the basis that a territorially bound people are able to control their own fate. Such collective responsibility is problematic because, as Tan argues, individual citizens are being held responsible for a country's policies which they most likely have had little to do with; so, “while Rawls's moral individualism sets firm limits on the extent to which collective decisions may affect individual well-being in his domestic conception of justice, there seem to be no similar limitations in his international theory” (2004: 73; see also Caney, 2005b: 130).

Rawls responds to this critique in the *Law of Peoples* by arguing that the self-determination of peoples is to be valued in its own right as an important good. He argues that the achievement of self-determination ought to be an aim of the duty of assistance (2001b: 111), as there is intrinsic value in individuals and associations being attached to their particular culture. This idea feeds into another reply, hinted at above, which is to do with collective responsibility. With self-determination comes responsibility for the decisions taken by a people; Rawls gives two examples of two contrasting sets of regimes that make different policy choices and thus have different levels of wealth (Ibid: 117-118). Given the

fact that such regimes have taken these decisions independently and autonomously, on the Rawlsian view there is no injustice in this situation. Indeed, to attempt to alter this situation through some form of egalitarian redistribution, as would be required by a cosmopolitan view, would be manifestly unjust on Rawlsian terms, as autonomous peoples would be asked to take responsibility for the failure of decisions taken freely by other autonomous peoples.

A further normative criticism related to toleration has been articulated by Pogge, who argues that in preserving the autonomy of peoples/states, no indication is given as to how far tolerance of illiberal regimes will extend, i.e. what level of tyranny/poverty/inequality is deemed to be “decent”? (Pogge, 2001b: 247). The principles of the *Law of Peoples* are effectively inter-state relations. So, while *Law of Peoples* provides guidelines for how liberal and non-liberal decent peoples should interact, no specific criteria are given as to how *far* the autonomy of decent peoples is tolerated.

One reply to Pogge’s criticism in this respect would be that, in the inclusion of human rights within the *Law of Peoples*, Rawls does provide a measure of the extent to which tolerance could be extended. With respect to nonliberal but decent societies, human rights are regarded as one of two essential criteria such a society must have in order to be deemed decent, and not, say, an outlaw society. Human rights on this reading include

[...] the right to life (to the means of subsistence and security), liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient

measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly (Rawls, 2001b: 65).

The role played by human rights, as envisaged by Rawls, is that they act as a limitation on both a society's right to go to war, and on its internal sovereignty. They are not peculiar to liberal countries, and he refutes the idea that it is only liberal countries that can guarantee human rights. This is because human rights are sufficient to deem a society decent (if not necessarily just, by the standards of justice as fairness) (Ibid: 80). Non-fulfilment of human rights earns a society the tag of an outlaw state, and in reply to Pogge's objection, (as understood within the *Law of Peoples*), the extent to which tyranny/poverty/inequality is tolerated would be the parameter of fulfilment of human rights:

What I call human rights are, as I have said, a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society. As we have worked out the *Law of Peoples* for liberal and decent peoples, these peoples simply do not tolerate outlaw states. This refusal to tolerate those states is a consequence of liberalism and decency. If the political conception of political liberalism is sound, and if the steps we have taken in developing the *Law of Peoples* are also sound, then liberal and decent peoples have the right, under the *Law of Peoples*, not to tolerate outlaw states (Ibid: 81).

Human rights, then, act as a way of circumscribing the independence of peoples, so that internally, within their territory, certain standards of decency are met. The consequences of not meeting these standards of decency essentially are non-inclusion within the *Law of Peoples*, and the tag of an outlaw state. Rawls also refers to condemnation by other states and possible coercive intervention by other peoples as consequences of non-compliance with human rights standards,

as well as the possibility of economic sanctions and ostracism from any schemes of international cooperation (Ibid: 38 and 93).

Thus the Rawlsian argument from toleration hinges on the limitations that human rights place on autonomy. It is here where the stipulation of human rights as a limit on autonomy fails with respect to contemporary globalising processes, or where the normative primacy given to the autonomy of peoples is to a large extent trumped by empirical reality. The responsibility of adhering to, and to a certain extent, policing human rights standards across peoples falls to peoples themselves, who are constrained by their status of a sovereign government within a given territory. While coercive intervention is allowed for (albeit in an under-specified way – Rawls states that this is not a question to which political philosophy has much to add; 2001b: 93), no indication is given as to how violations of human rights standards by supra-territorial, non-state actors ought to be dealt with. In fact, it seems there is an assumption that human rights violations that emanate from governments or states are the only ones that are relevant, given that there is no mention of other actors who may perpetrate human rights violations. In Rawls's defence, it can be argued again this is where the importance of the role of domestic governments comes into play. On Rawls's understanding, human rights violations by non-state actors would presumably come under the guise of the domestic law of the country in which they operate; as such, these sorts of human rights violations are not of concern in *Law of Peoples*.

Setting aside the empirical problem posed by restricting concern about human rights violations just to those committed by states or governments, there are other normative objections to Rawls's position in relation to human rights. Caney points out that we are not given objective reasons for the inclusion of some rights (freedom of conscience for example), and not others (equality of opportunity) (Caney, 2005b: 127). Following on from that, one of the rights that Rawls denies is a human right to democratic government; yet as Caney asserts, the realisation of some rights, (he uses the right to subsistence as an example, a right which is endorsed by Rawls) may be dependent on a right to democratic government being recognised as well (Ibid:128). Again the basis of Rawls's view is that once a right to democratic government is ensured at the domestic level, it is not necessary for it to be guaranteed at the international level.

These sorts of criticisms point to the idea that while Rawls's central arguments hinge on the direct transition that can be made from the realm of domestic theory to that of international theory, such a transition is not as clear as is assumed in *Law of Peoples*. So while the goal is to extend tolerance and autonomy to a world of peoples who have different cultural beliefs, the outcome of Rawls's ideas are problematic for his own liberal theory in many ways.

By focussing on peoples as the principal agents in the international original position, *Law of Peoples* constitutes an interactional conception of international justice, whereas at the domestic level, it is an institutional conception (Pogge, 2006: 213). This distinction, Pogge argues, denotes the idea that at the domestic level, what is of concern is the institutional order to which principles of justice

apply; thus the basic structure of society constitutes the most important set of institutions that influence the sort of life a person has. At the international level, Rawls proposes an interactional conception, which is effectively a set of rules about how peoples are to interact with each other. The domestic/institutional conception allows for flexibility in how states can adapt to changing circumstances; the international/interactional, conception does not have this flexibility and commits peoples to a fixed set of international rules (Ibid). In so doing, Rawls assumes the lack of an institutional order at the international or global level that is significant enough to warrant the application of redistributive principles of justice to it. What this distinction points us to is the second set of empirical objections that can be made to Rawls's argument, all of which draw from the contention that *there is* a global institutional order that warrants the application of principles of justice.

4.2.3 Empirical Critique

In the first instance in this regard, it can be argued that the choice of peoples/states as the unit of concern in *Law of Peoples* is historically contingent as opposed to morally correct. As Buchanan argues, "peoples" are based on key Westphalian assumptions - economic self-sufficiency, and political homogeneity, resulting in distributional autonomy (Buchanan, 2000: 701). However, a Westphalian system of self-governing states is but one form of political organisation (albeit one that has dominated the recent past). Rawls addresses this objection of arbitrariness:

It does not follow from the fact that boundaries are historically arbitrary that their role in the *Law of Peoples* cannot be justified. On the contrary,

to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstance. In a reasonably just (or at least decent) Society of Peoples, the inequalities of power and wealth are to be decided by all peoples for themselves (Rawls 2001b:39, emphasis in original).

Arbitrariness of borders is not considered relevant then - what matters from a moral point of view is how the territory within those borders is governed. As Freeman argues, “historical arbitrariness of existing boundaries does not mean that it is arbitrary whether or not a people has a territory to reside in and control which is respected by others” (Freeman, 2003: 48). It is the right to self-determination of peoples that matters, and *Law of Peoples* is about securing that right.

However, this does not address a second more specific objection that can be made here. The right to self-determination, as a means of securing internal justice and thus international peace and security, cannot be disputed as an intrinsically important part of the picture of global justice. Similarly, the *fact* of boundaries, however arbitrary, is something that must be dealt with. However, it is the stark choice presented by Rawls that is a crucial shortcoming. *Law of Peoples* views the world in terms of that which takes place at the domestic level and that which takes place at the international level; there is interaction between such levels, and there is interaction between peoples at the international level. However, the emergence of rules and standards at the level of global governance tells against this division. In this division of the world along a national/international dichotomy, the possibility for non-territorially specific *global governance* (as opposed to *government*) is not allowed for. As Pogge

notes, *Law of Peoples* offers “no reasons for opposing a future in which the significance of states is fading while that of other crosscutting and overlapping territorial and non-territorial associations and communities increases” (2001b: 248).

What is inferred by this distinction is that “government” implies a sovereign body whose scope of responsibility and capability is constrained by the territory over which it is sovereign, incorporating the laws and policies of a domestic government, as well as the inter-state agreements to which such governments assent. Global *governance*, on the other hand, is more difficult to specify, but broadly refers to the series of rules, standards and norms developed by both state and non-state actors within public and private global regimes. These actors include states, private corporations, non-governmental organisations, and international organisations (for an overview see Murphy 2000; more specifically on the part played by different types of actors in global governance see for example Rosenau and Czempiel, 1992; Cutler, Haufler, Porter, 1999; Braithwaite and Drahos, 2000; O’Brien, Goetz, Scholte and Williams, 2000).

The key point here is that the rules, standards and norms that emerge from structures of global governance are significant with respect to the type and quality of life people experience. The uniting feature of this diverse and complex network of actors is that they do not apply to, or are not responsible for, any one territory, be it (in terms of Rawls’s dichotomy) a domestic government or a world state. In making a stark division such as this, no allowance is made for a state of affairs in which (global) governance has become highly complex and

inter-linked, and which does not fit neatly into a national/international dichotomy. The specific features of global governance relevant to the thesis, namely forms of private authority such as global corporations, will be dealt with further in the next chapter. However, in relation to the point at hand, and to extend Pogge's criticism, not only does Rawls not provide reasons to object to a future such as this, he does not countenance the possibility that such a "future" is, in fact, significantly present.

The third point in this regard is that in assigning peoples/states this degree of centrality, Rawls makes an empirical claim about the *ability* (regardless of the desirability of self-determination as a goal) of peoples/states to self govern, that does not hold in the context of contemporary processes of globalisation. This is demonstrated in the priority Rawls gives to the domestic conditions of a burdened society in the objective that it becomes well-ordered. In relation to the Duty of Assistance, liberal societies have to recognise that it is the public culture of a burdened society that has to be changed in order for it to become well-ordered; it is not just a matter of dispensing money. He states:

I believe that the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. I would further conjecture that there is no society anywhere in the world - except for marginal cases - with resources so scarce that it could not, were it reasonably and rationally organised and governed, become well-ordered (Rawls, 2001: 108).

There are two aspects of this statement that together seem something of an anomaly in the context of globalising processes. Firstly, the notion of a well-

ordered liberal society is one of the companion ideas of 'justice as fairness', and conveys three things:

- A society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice.
 - Its basic structure is publicly known, or with good reason believed, to satisfy these principles.
 - Its citizens have a normally effective sense of justice and so they generally comply with society's basic institutions, which they regard as justice.
- (Rawls, 2005: 38).

In the international sense, what is required in order for a nonliberal decent society to be deemed to be well-ordered is less clear. Certainly it is not required that decent societies view their citizens as free and equal; however, Rawls does state that nonliberal decent peoples "are seen as decent and rational and as capable of moral learning as recognized in their society. As responsible members of their society, they can recognize when their moral duties and obligations accord with the people's common good idea of justice" (Rawls, 2001b: 71). Therefore well-orderedness denotes different things in liberal and nonliberal societies, with the requirements of a liberal society being more demanding than those of a nonliberal society. The key point is that the concept of well-orderedness leaves the substantive content of justice open to its citizens.

Rawls's statement above, that any society anywhere can become well-ordered, can be read as saying that any society has the capacity to become if not just, then

at least decent, regardless of resource scarcity, as long as it is well-ordered. However, in the context of how we find the world, the possibility for the establishment of such a coherent group that can agree unproblematically on how a society should be organised within a given territory is questionable. Increased migration, understood to be part of globalisation, points towards increased fragmentation within societies, such that the ability of citizens to agree about principles of justice is threatened. As Buchanan points out, this is an assumption that hinges on deep political unity within a state being a standard case from which ideal theory can be derived; in respect of this, he states, “Why is this the standard case? If by the standard case, we mean the typical case, it is certainly not the standard case in our world, nor is it likely to become standard” (2000: 717). Furthermore, given that many causes of injustice have their origin outside of a domestic society and are to a great extent outside of its control, it is also questionable whether or not being well-ordered matters to the extent that Rawls argues it does. Perhaps citizens are able to agree easily on what constitutes justice, but in many cases it is in fact *external* circumstances that violate their own principles of justice.

Rawls also refers to the causes of wealth of a society, the assumption being that its government can solely determine a society’s degree of wealth. Again, this is questionable in the context of economic globalisation. The causes of wealth of a society are linked in quite a serious way to the extent to which such a society copes with structures of governance that operate outside of its territorial boundaries (for instance, the degree of “openness” of a domestic economy to international trade). To isolate the creation of wealth as something that relates

only to the sphere of the domestic is to overplay the role of a government's capacity to act.

In summary, this section has given a descriptive account and critique of how Rawls deals with the question of justice in the international realm. The overarching idea of this section has been that Rawls's essentially statist account is problematic for both normative and empirical reasons. In normative terms, the general idea presented was that despite the fact that Rawls makes his arguments on the basis that he is protecting the liberal value of tolerance, the consequences of this are, in many respects, problematic for the very nature of tolerance. While Rawls offers human rights as an internal limitation on the extent to which nonliberal societies can be deemed to be decent, it was argued that this account is limited for both normative and empirical reasons. In the case of the latter, it was argued that Rawls neglects the very real human rights abuses that can be perpetrated by non-state actors, and there is no provision for this within *Law of Peoples*, the assumption being that this is a concern for domestic government rather than one in the international realm. In terms of normative objections to Rawls's account of human rights, it was argued that without justification he includes some rights and omits others, which is especially problematic in that the fulfilment of some rights can sometimes be contingent on the fulfilment of rights that are not included – such as the right to subsistence (included) being dependent on the right to a democratic government (not included).

In empirical terms, it was argued that Rawls's account of justice in the international realm does not adequately deal with the world as we find it, despite

it stated premise at the outset to proceed from that world as it is now. The restriction of principles of distributive justice to co-citizens within states neglect some important realities about the role and capacity of states in the context of contemporary processes of globalization. In this regard it was argued that the choice of peoples (or states) as the chief unit of concern is historically contingent, dependent on a view of the world that was once correct. Furthermore, it was argued that the dichotomy that Rawls draws between the domestic and international realms neglects structures of global governance that are involved in the development of rules, standards and norms. Such structures have a profound effect on people's lives, yet they cannot be easily dealt with in such a dichotomy. Following on from this, it was argued that in *Law of Peoples*, Rawls is making an empirical claim about the ability of states to become well-ordered and wealthy. In terms of being well-ordered, this claim was objected to on the grounds that it overplays the unity within contemporary states regarding agreement on conceptions of justice; in terms of societal wealth, this claim was also rejected as there is ample evidence to suggest that a state's participation in and cooperation with external structures of governance is linked to their ability to become wealthy.

Thus Rawls's argument in *Law of Peoples* is not adequate for the question of CSR and global distributive justice. This is not a surprise, as it is certainly not the aim of *Law of Peoples* to deal with such questions. However, some of Rawls's ideas are very useful in making the case for the applicability of justice to corporations and, as will be argued in the next chapter, it is sufficient in

Rawlsian terms to argue that profound effects on people's life chances are enough for principles of distributive justice to apply.

4.3 Distributive Justice and National Self-Determination

This section of the chapter develops a critique of conceptions of distributive justice that are constrained by the perceived normative value of national self-determination. As mentioned above, national self-determination is important in the Rawlsian account in *Law of Peoples*, the broad idea being that distributive justice is not necessary beyond the national realm, because people must be in some sort of relation in order for them to have redistributive responsibilities. The difference in the following account is that what is important in this respect is the *cultural* ties of the nation (as opposed to the *political* ties of the state). Miller has advocated this approach most recently (2007). There is some similarity between Miller's and Rawls's account, in that both reject the claim of global egalitarians that global redistributive principles are necessary and both see a value in a division of labour between the domestic and international spheres. In addition, both accounts discuss human rights as a minimum guarantee of justice and view the collective responsibilities of peoples (Rawls), or nations (Miller), as central to international justice. This section first gives a description of Miller's account, which is followed by a critique of this account once again based on normative and empirical objections.

Miller's view is a non-redistributive view of global justice, with a territorially bounded political community at its core. However, it is the ties of a nation,

culturally understood, rather than the political ties of citizenship that are the justification for this view. Again, similarly to Rawls, Miller's views on justice beyond the domestic realm are explicitly shaped by his conception of justice *within* the domestic; his view is based on the idea that it is the communal ties of national identity that make distributive justice possible, i.e. it is the solidarity that exists between co-nationals that enables the reciprocal relations necessary for distributive justice (De Schutter and Tinnevelt, 2008: 370-371). Nations, politically organised into states, have the responsibility of ensuring social or distributive justice. The role of a just international sphere, then, is "to create the conditions under which that responsibility can be discharged" (Miller, 2007: 20-21).

In this respect, there are three core aspects to nationality that together give substance to the claim that it is the nation that is centrally responsible for distributive justice. These are:

1. Nationality is legitimately part of someone's identity
2. Ethical claims that national communities have special duties to one another.
3. Political claims that people who form a national community have a good claim to self-determination - the right to develop an institutional structure to collectively decide matters that affect their community. (Miller, 1995: 10-12; see also 2007: 124-130)

All three claims are interlinked, but the third one relating to national self-determination reinforces the first and second one: "The fact that the community in question is either actually or potentially self-determining strengthens its claims on us both as a source of identity and as a source of obligation" (1995: 12). This view is expanded elsewhere:

[...] the more open and democratic a society is, the more justified we are in holding its members responsible for the decisions they make and the policies they follow. In these circumstances, there would seem little objection to requiring the members to bear the costs of what they decide to do (2007: 130).

Thus, for Miller, the question of responsibility is central in respect of global justice. He develops an account of responsibility that starts from the individual, extends to the collective, then to the national and finally to responsibility for the national past (De Schutter and Tinnevelt, 2008: 374). In circumstances where a nation is ruled from the outside, or governed from within by an autocratic individual or elite, the demarcation of responsibility is not so clear; but when a nation is democratically self governed, Miller claims it is the nation alone that is responsible for determining the quality of life people experience, thus any claims of distributive justice must be situated within a self-determining nation state.

On this basis, Miller proposes two principles of global justice that derive from his views on nationality, collective responsibility and self-determination. The first is a list of basic human rights, the second the stipulation that international co-operative practices between nations be fair and non-exploitative. This account, described by Wenar as “sufficiency not equality” (2008: 401), on Miller’s view ensures a basic minimum level of justice is guaranteed in the international sphere and that the wider context in which nations operate enables them to make autonomous decisions regarding distributive justice that have an affinity with their national and cultural identity.

While Rawls’s account of global justice turns on the preservation of certain key liberal values, such as tolerance and autonomy, Miller’s account hinges on the

ethical primacy of the nation as a culturally cohesive unit in which members are collectively held responsible for determining their own fate. Both accounts advocate a global minimum of basic human rights, and fair terms of cooperation between peoples or nations; yet Miller's view rests on the cultural value of common identity and responsibility in relation to justice, rather than the specific value of citizenship and reciprocity in relation to justice.

In relation to the central claim of this thesis, that principles of global distributive justice apply in circumstances where institutions have a profound effect on peoples' life chances, the primary difficulty with Miller's account is that it is not as clear as he argues that national self-determination is the central concern of global justice. Like the critique of Rawls provided above, the objections of the thesis to Miller's argument are focused on his normative and empirical claims.

4.3.1 Normative Critique

The centrality of the nation in Miller's account is a normative claim about the moral appropriateness of the nation as the ideal community within which an individual should live. The thought is that the assumed stability of national culture and identity within the nation is an arrangement that offers the greatest possibility for people to experience a just life. National identity implies a number of different things: common belief; historical continuity; active identity; geographical place; national character, or common public culture (1995: 21-26). This common public culture is a set of understandings a nation has about how their collective life should be led - principles that set the terms of political association, and guide political decision-making (2007: 124), foremost amongst

which is the protection of national culture (Ibid: 131). It is the practice of this set of common ideas and beliefs over time that lead to the charge that nations are solely responsible for the welfare of those that reside therein:

Global justice, on the view I am defending, is justice for a world of difference, not merely because ironing out differences between nations would be unfeasible or involve high levels of coercion, but because people greatly value living under their own rules and according to their own cultural beliefs (Ibid: 21).

However, culture and identity as a basis of a claim of distributive justice represent too fluid an idea to warrant decisions about the distribution of benefits and burdens within a society. Just as the strict association of citizenship with territory is subject to challenge in globalising circumstances, so too is the idea that the primary identity and culture to which people legitimately subscribe is defined by the nation. Miller allows for the existence of different beliefs and dissent within nations, but holds that there must be a core set of attitudes and understandings in order for a nation to exist, and in order that that nation is held responsible for its members. Yet if culture and identity are subject to change and “erosion by external forces”, as Miller acknowledges (Ibid: 131), their value as justification for the use of the nation as the locus of claims of distributive justice is surely questionable. Miller might object to this criticism by countering that culture and identity are indeed subject to erosion but that this is merely regrettable rather than a reason to change the fundamental basis of distributive justice claims; in ideal circumstances this wouldn’t happen.

However, what is at stake in questions of justice is surely the type and quality of life chances people experience – not the maintenance of cultural identity within a

historically contingent idea of the state as the locus for that identity. Culture and identity are politically important, of course, but this importance is minor in relation to that of distributive justice. Similarly, collective responsibility is also important, but in questions of justice, it is reasonable to argue that it has a limited range of application. If resource allocation or the distribution of goods within a society, or indeed globally, becomes too unequal, then surely concern about identity and responsibility is of lesser import. The point here is that the restriction of justice claims to the nation on the basis that justice is only possible, and desirable, in communities held together by common identity and a sense of collective responsibility focuses our attention on the wrong thing, i.e. the perceived solidarity of nations, rather than the existence of pervasive injustice. The argument here is not that national self-determination is not important, or indeed part of a wider picture of global justice (in fact some cosmopolitans view national self-determination as important), but that it is not a key *determinant* of justice.

A related point is the value of self-determination of the nation as central to global justice. Miller holds that once a nation is politically self-determining, it is wholly responsible for the distribution of benefits and burdens experienced by its members - as indicated in the above quote, the more self-determining a nation is (i.e. the more democratic it is), the more responsible it is. There are limitations to the extent to which responsibility can be said to rest solely with the nation - for example in nations subject to external rule, where cultural divisions run deep - but aside from these cases “where nations act in ways that impose burdens on themselves or on others, responsibility for such burdens falls on every member,

even on those opposed to decisions or policies. This turns on the sharing of beliefs and attitudes that characterises national communities, and on the benefits that membership brings” (Ibid: 133). Self-determination is seen by Miller to be a limit to global egalitarian claims regarding distributive justice, but also, he points out, as a limit on global inequality, in that nations should not deprive other nations of their own right to self-determination (Ibid: 74 n22).

The problematic assumption here is the extent to which a nation is wholly in control of the circumstances that affect the distribution of benefits and burdens within a society. There is a clear political value to the self determination of a nation, both for practical and ethical reasons. But, similarly to the point about cultural identity and justice, it is not so clear that the existence of a self-determining nation ought to be the parameter by which principles of distributive justice are decided. While it can be reasonably be said that it is just for an individual’s life to be shaped significantly by the society in which they live, it does not necessarily follow that there should *not* be redistributive measures that regulate global arrangements. A good analogy here is that of the family, and the extent to which family membership can be legitimately allowed to determine individual life chances (see Brighthouse and Swift, 2008 for a recent discussion of this question). It is reasonable to suggest that everyone has an interest in being part of a family and having their interests partially determined by that family. However it would be unjust if people’s life chances should be entirely determined by their family, or that their status as family members would supersede their status as individuals. In other words, while societies have a clear interest, and duty, in there being social and political mechanisms that protect

individuals' wellbeing and enhance their life chances, this should not be limited to the family, or indeed the nation. The question of justice is larger than that of the preservation of such social and political mechanisms, to the extent that a legitimate interest in national self-determination is surely superseded by a concern for people's life chances, regardless of their culture or nation.

4.3.2 Empirical Critique

Following on from this, the preservation of self-determination as an intrinsic determinant of the type of life a person experiences is also an empirical conjecture about the ability of self-determining nations to ensure a just life for their citizens. Miller employs, as Bader points out, a "split-level analysis" divided into nations and state governments on the one hand, and global institutions on the other (Bader, 2008: 547). Similarly to the point made above about Rawls and *Law of Peoples*, this stark dichotomy of the world deviates too much from the world as we find it, such that Miller's general argument is rendered less useful. Structures of global governance mean that there are a variety of rules, norms, standards and organisations that do not fit into Miller's dichotomy but that are important from the point of view of justice and the type and quality of life that people experience. Miller's own focus on the importance of loyalties, common identities and solidarities to the realisation of justice is hampered by his neglect of the extensive range of complex loyalties that people employ, something that is exacerbated by contemporary globalising circumstances. In this regard, Bader mentions multi-level and multi-layered citizenship, trans-national polities such as the EU and trans-national citizenship in particular, all of which "provide promising opportunities to accommodate

transnational and global shifts in affiliations, loyalties, identities and obligations” (Ibid).

A further empirical objection to Miller’s account is his assumption that national government can easily determine the fortunes of its people without impact from outside the nation. In many ways, Miller’s account treats the development of policy and the actions of governments as if they take place in a vacuum. Whilst he acknowledges the extent to which the global economic order impacts upon those who live in poor countries, and thus advocates the development of fair terms of cooperation between rich and poor countries (2007: 253), the treatment of this empirical reality is circumscribed by the normative primacy of national self-determination. Thus, again similarly to Rawls, Miller works on the basis that as long as nations are allowed to decide their own fate within a fair international order, global redistributive principles are not necessary. As argued above, this is both normatively *and* empirically problematic. What is missing then is the idea that as a consequence of globalisation, the power to determine the terms of cooperation of the international order does not rest solely with governments and citizens; similarly, the circumstances of injustice experienced by many are not directly attributable to the policies of self-determining nations.

For instance, when the IMF imposes conditionalities related to economic reform that negatively impact upon a country’s poorest people, it may be the nation’s government that has agreed to and implemented the policies, thus we can attribute some direct responsibility to the government. However, the development of such policies is attributable to the IMF which is made up of a

number of different governments and which wields considerable power. Similarly, with global corporations, it is the case that national governments allow them to locate within their territory, and thus subject them to local laws and taxes; however this occurs in a situation in which the mobility of capital, versus the immobility of national governments, means there is an imbalance between a government's ability to regulate a global corporation, and a corporation's ability to relocate to more favourable locations.

In relation to such objections, Miller could counter that the task of the political philosopher is not to address such empirical questions, in a similar way that Rawls argued that political philosophy has nothing to say about coercive intervention in cases of human rights, this being instead the task of the policy maker. Indeed, Miller responds to Bader's criticisms by stating "I fear that attempts to be specific about, say, the design of the international institutions that would best serve the cause of global justice will quickly fall foul of the problem of empirical disagreement" (Miller, 2008: 555). As such the task at hand is to develop just principles that are not constrained by empirical realities to the extent that what is just is determined by what is possible. This is a valid point and is something that is discussed in chapter six. However, it suffices to argue here that Miller's reluctance to deal with how the world is shapes his theory in a way that makes it difficult to see how it would apply in contemporary circumstances, for both the empirical and normative reasons listed above.

In summary, Miller's argument is that global justice is constituted by the achievement of national self-determination for all nations. On the basis that an

individual's life chances are best served by the development and implementation of principles of justice at the domestic level, Miller argues that once all nations are democratically self-determining, there is no need for global redistribution. This claim hinges on the idea that nations are constituted of a cohesive unit of people who are able to agree on principles of justice. This claim was disputed on both normative and empirical grounds.

4.4 Distributive Justice and Sovereignty

So far this chapter has discussed two ways in which the restriction of principles of distributive justice to a territorially defined community like the state or nation-state is problematic. Primarily the claims made by advocates of these views have been justified on the basis of the political ties of citizenship, or the cultural ties of the nation. This section deals with similar claims that have been justified on the basis that it is the joint authorship of rules that restricts distributive justice to the state. This argument has most recently been articulated by Nagel (2005), although it has also been stated elsewhere (see for example Miller 1998 and Blake 2002). On this view, global distributive justice is also ruled out because it is thought that people must be part of some sort of established political relation, or subject to the same set of rules, in order to justify redistributive measures. Similarly to the previous two sections, this section will first provide a descriptive overview of Nagel's account, and then once again develop a critique that is based on his normative and empirical claims.

Nagel's starting point is the Hobbesian claim about the relationship between justice and sovereignty:

What creates the link between justice and sovereignty is something common to a wide range of conceptions of justice: they all depend on the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force ... This collective self-interest cannot be realized by the independent motivation of self-interested individuals unless each of them has the assurance that others will conform if he does. (2005: 115)

He articulates a political conception of justice that has sovereign states at its core; it is the existence of states that give the value of justice its application.

Duties of justice are not owed to everyone in the world:

Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation ... The full standards of justice, though they can be known by moral reasoning, apply only within the boundaries of a sovereign state, however arbitrary those boundaries may be. Internationally, there may well be standards, but they do not merit the full name of justice (Ibid: 121-122).

There is considerable overlap between what Nagel and Rawls advocate, the primary general difference being that Nagel specifically addresses the matter of global justice. However, he is of the view that Rawls was broadly correct; despite the moral appeal of cosmopolitan global egalitarian claims, Nagel believes that the political conception of justice is what most people hold to be correct, and is what works:

[...] the defence of the political conception of justice would have to hold that beyond the basic humanitarian duties, further requirements of equal treatment depend on a strong condition of associative responsibility, that such responsibility is created by specific and contingent relations such as fellow citizenship, and that there is no general moral requirement to take

responsibility for others by getting into those sorts of relations with as many of them as possible...This makes it a very convenient view for those living in rich societies to hold. But that alone does not make it false (Ibid: 126)

On Nagel's view, the choices surrounding global justice are either a cosmopolitan application of principles of distributive justice, mediated through a world government (Ibid: 119), or the political conception, which ensures distributive justice within states. On this latter conception, there can certainly be broad humanitarian concerns related to global poverty (which, as he argues, are so grim that relatively speaking justice itself may be a side issue - Ibid: 118), but these are distinct from duties of justice.

This restriction quite clearly leads to the charge that it is morally arbitrary, and such arbitrariness is unacceptable in the context of claims about distributive justice. For Nagel, it is the joint authorship of sovereignty that provides us with the necessary condition to justify his argument:

A sovereign state is not just a cooperative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association. I submit that it is this complex fact - that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences - that creates the special presumption against arbitrary inequalities in our treatment by the system (Ibid: 129).

The thesis presents two central critiques of Nagel's argument. This first is empirical, and broadly argues that even if Nagel is correct to say that requirements of justice only apply between people who are related through the exercise of authority and the co-authorship of rules, he is wrong to argue that this

does not apply globally. The second point is normative, arguing that sovereignty is not necessary for justice to apply – requirements of justice can be triggered in circumstances where no one has been asked to obey any rules.

4.4.1 Empirical Critique

The empirical critique of Nagel's argument is similar to the points that have been made in previous sections. Nagel's view of global politics is that extensive institutional governance arrangements at the international level are significant enough to assert that we are clearly in some sort of institutional relation with one another globally, but that such relations are not significant enough to warrant the application of principles of distributive justice globally:

Current international rules and institutions may be the thin end of a wedge that will eventually expand to seriously dislodge the dominant sovereignty of separate nation-states, both morally and politically, but for the moment they lack something that according to the political conception is crucial for the application and implementation of standards of justice: They are not collectively enacted and coercively imposed in the name of all individuals whose lives they affect; and they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all those individuals in some sense equally (Ibid: 138).

There are two points to be made here. The first is that Nagel goes on to observe that the majority of international rules and institutions are founded on state authority and involve some form of delegation of state authority in order to function (Ibid: 138-139). He also argues that the fact that such institutions are founded on state authority does not mean that the claims of justice that are applicable to the state are also applicable to international institutions that rely on

state sovereignty to exist. Moreover, he also mentions newer forms of international governance, such as global and regional networks, and views these to be similarly founded upon state authority and representative of the self-interested bargaining that takes place between states. If this is indeed the case – that all international governance is merely a partial transfer of state authority up one level, as it were – then surely on Nagel’s own argument it follows that justice claims are applicable, precisely because (in his view) justice applies in sovereign relations.

Even if he is correct in saying that justice applies only in sovereign relations of authority, and that all international governance is based on state-based sovereign authority, the logical conclusion of this seems to be different to that which Nagel arrives at. If representatives of states within international institutions make decisions and bargain on behalf of their citizens, who live under the collectively imposed rules of such international institutions, it would seem that there is a relationship of authority between such citizens and institutions, and such authority is founded upon sovereign states. Thus there is a claim of distributive justice. Nagel argues there isn’t, because it is an “an indirect relation to citizens that is morally significant” (Ibid: 139). However, it is not really explained why this indirect relation is morally significant.

The second point is that Nagel’s view is incorrect in relation to international governance, in terms of its make up as well as in terms of voluntariness. Of course he is correct that many institutions, or more particularly the “old” institutions, such as the UN, the IMF or the World Bank, are founded on state

authority, and newer institutions such as networks of global governance also have states participating. However he is incorrect to say that institutions of international governance are constituted solely by states bargaining with one another. This perception of international governance neglects the fact that many interests at that level are not representative of one state function, or one state. All the international organisations he mentions allow civil society representation, which often are organised on the basis of a particular issue, or geographical region and so span across states. Regional governance bodies also form collective representative groups within international organisations; for instance, the EU bargains collectively in many instances. Business interests also form representative groups within international organisations, bargaining on behalf of industry interests that may be demarcated by region or industry type etc, but not by state. Cohen and Sabel characterise this scenario as global rule-making, elaboration and application, global contestation and reshaping of such rules, permanence of the rules, and the encouragement of conduct abiding by those rules by the creation of incentives, sanctions and a high cost of withdrawal (2006: 164-165). While this picture of global rule making does not involve the coercive imposition of rules, as in the state, it is significant enough to warrant attention from the point of view of justice.

So in relation to the first point, if international governance institutions are only made up of state authority then it is not clear why claims of justice are not applicable; in relation to the second point, the make up of international institutions of governance cannot be understood in terms of states bargaining with each other – global governance arrangements are much more complex than

that. This would seem to endorse Nagel's view about there being an indirect relation between such institutions and citizens that is of moral significance. After all, the more complex the arrangements, then presumably the more indirect the relation. However, this is where the argument about voluntariness is significant. Nagel's view is that states enter into international governance arrangements voluntarily and thus can exit such arrangements equally voluntarily. This seems a deviation too far from the world as we find it.

It is difficult to see how withdrawal of membership of any such organisations would be in any state's interest. Given Nagel's view that states enter into such arrangements in order to protect their own self interest, it seems unlikely that states would voluntarily withdraw. As was discussed in the previous chapter, international institutions of governance were founded as part of an "embedded liberal compromise" that enabled states to participate in structures of global capitalism while protecting their domestic citizens. To posit that states can simply voluntarily leave such institutions is to suggest that such states withdraw from global capitalism. In terms of an empirical reality, this does not seem to be a very realistic or helpful conjecture. Furthermore, states participate in international institutions of governance in order to find solutions that they simply cannot solve alone – global climate change is the most obvious case in point. If states participate internationally purely in terms of self-interest, then it seems clear that it is in their interest to remain within such institutions.

Thus the picture Nagel paints of the nature of global politics can be disputed by reference to empirical knowledge about how global politics functions in present

circumstances. Globalising processes render the dichotomy drawn between sovereign states and international governance institutions quite problematic. He addresses this problematic dichotomy by introducing the idea of a “sliding scale” of requirements of justice, which would relate to different degrees of engagement between individuals:

The claim would have to be that since we are both participating members of this network of institutions, this puts us in the same boat for purposes of raising issues of justice, but somehow a different and perhaps leakier boat than that created by a common nation-state (Ibid: 142).

As well as being impractical, Nagel rejects this idea as morally unfeasible, less plausible than either the political conception he advocates, or a full-scale cosmopolitan conception of global justice. This is because he sees sovereignty as central to justice and on this sliding scale of interactions that individuals may have with institutions of international governance, there is no consistently identifiable sovereign relation. Thus, a middle ground approach according to Nagel is not possible.

4.4.2 Normative Critique

This leads to the normative critique of Nagel’s argument. Of course if sovereignty is viewed to have such a central role in regard to distributive justice, the “sliding scale” Nagel outlines is a non-starter. However, the argument presented in this thesis leads to a different discussion, (the second objection to Nagel’s conception of global justice), which is that in focussing on the condition of sovereignty in relation to global justice, Nagel focuses on the wrong thing, and asks the wrong questions. If the central criterion surrounding global justice

relates to how it might be integrated with *traditional* notions of sovereignty, the political conception of justice appears the more appealing one. Yet Nagel mentions the moral appeal of a cosmopolitan conception, and acknowledges the morally distressing nature of the questions a theory of global justice would presumably address. In fact it seems there is an interest in taking global justice further, but the constraints of the political conception does not allow for this.

The point here is that it is not necessarily the case that sovereignty is so crucial to trigger requirements of distributive justice. The previous sections argued that the political ties of citizenship and the cultural ties of the nation are not central determining factors when it comes to the scope of distributive justice. In the case of the former, it was argued the priority given to liberal toleration is not justifiable. In the case of the latter, the priority given to national self-determination is also not justifiable. In terms of Nagel's argument, the priority given to sovereignty is equally problematic. It is not clear from Nagel's position why sovereignty or the co-authorship of rules is necessary to trigger principles of distributive justice.

What defines sovereignty as this special trigger of norms of justice, according to Nagel, is the co-authorship of rules within a society – all members of a society are subject to coercively imposed rules, with which they are involuntarily associated, and which require the “active engagement” of their will in order to be justifiable. He states

The society makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence; and it

holds us responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and disadvantages are created and distributed. Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible, and we therefore have standing to ask why we should accept them (Ibid: 128-129).

Thus co-citizens are asked to accept as legitimate forms of state coercion in order that the arbitrary inequalities of that system can be mitigated, through principles of distributive justice; Nagel argues that it is only within a state, not at the global level that this occurs; a similar argument is also made by Blake (2002: 265). Yet this seems an arbitrary way in which to think about justice, and surely leaves out many circumstances of injustice, merely because people's will has not been actively engaged in accepting rules that are imposed on them.

Pevnick argues that this "double jeopardy" is troublesome for two reasons: first that it makes justice dependent on states' leverage in pre-institutional power structures (or that strong states are able to ensure that there is no coercively imposed system to which parties must agree because it may be to their advantage to do so); following on from that, secondly, is that this allows strong states to ignore claims of justice from weaker ones (2007: 404-405). Thus Pevnick views Nagel's conception as problematic for a state-based conception of international governance, in which unequal states engage in bargaining at the international level. Caney also points out that Nagel's argument does not necessarily lead us where he wants to go – states acting "in the name of" their citizens at the international level might also be legitimately expected to take on a cosmopolitan political morality of acting honourably and justly, and not necessarily act purely from reasons of self-interest (2008: 513). Thus it is not the case that states should

not be expected to allow claims of justice at the international level. As Caney asserts, cosmopolitan egalitarians could claim this is a *requirement* of state behaviour.

However, it is the contention here that this problem extends *beyond* the unequal status and behaviour of states engaged with each other at the international level. The thesis argues that what is of concern for a conception of distributive justice is in situations where an institution has a profound and unavoidable effect on an individual's life chances. As has been argued in this chapter, the thesis perceives global politics to be constituted by a more complex picture of interaction than that of states bargaining with each other. Global governance structures involve a wide variety of actors and groups in the development of rules, standards and norms that do not fit into this inter-state conception of global politics. Whilst Nagel to an extent acknowledges these global governance structures, as was argued above, he is incorrect to assert that all behaviour in this context can be explained by representatives of states bargaining with each other from a position of state based self-interest. However, in normative terms, in a situation where there are rules that are imposed on people, that have a profound effect on life chances, but do not engage the "active will" of those people on whom they are imposed, it is still the case that principles of distributive justice are applicable.

Again, the example of the family can be used as an analogy. Membership of a family is not a voluntary association – it is not an *active engagement* of will to be born into a particular family. Rules within a family can be coercively imposed upon family members that are unjust, without those members agreeing to such

rules. A case in point could be the prevention of female members of the family in pursuing higher education on the basis of their gender. This is an unjust coercion of female members of the family, without there being any active engagement of their will to actually be part of that cooperative arrangement. A similar analogy could be in relation to employees losing their jobs unfairly, say for example because a company opts to relocate production to another country, where labour costs are lower. We cannot say that the employer-employee relationship is one of justifiable coercion and compliance with rules. An employee's will is not actively engaged by an employer in the manner of the relationship between state and citizen. However, the loss of the employee's job, through no action of his or her own, would seem to be an unjust situation. Nagel would presumably counter that the employer-employee relation is a voluntary association, in that either party are free to leave, and thus distributive justice is not applicable. However, it would seem to be the case that the employer's decision has a profound effect on the life chances of the employee, and even though it is not a coercive relationship, there is sufficient interaction between employer and employee for their to be a claim of justice.

The key point here is that in focussing on sovereignty, Nagel focuses on the wrong thing. If it is a concern of justice to mitigate suffering and distribute benefits and burdens fairly, then sovereignty is less relevant. Nagel expresses a concern that the facts of global poverty and inequality are so grim that perhaps a focus on global justice is in fact a side issue: "Whatever view one takes of the applicability or inapplicability of standards of justice to such a situation, it is clearly a disaster from a more broadly humanitarian point of view... some form

of humane assistance from the well-off to those in extremis is clearly called for quite apart from any demand of justice, if we are not simply ethical egoists” (2005: 118). Yet approaching such questions from the point of view of humanitarianism is not necessarily an adequate way forward, given that many problems of global poverty are systemic in nature, and not resolvable by the transfer of funds from wealthy countries to poor ones. As he admits, justice demands much more than humanitarian concern.

4.5 Conclusion

This chapter has presented three prominent state-based views of the requirements of global justice and has critiqued these views using empirical and normative arguments. In relation to Rawls, it was argued that his preservation of liberal tolerance actually works in ways that are problematic for the value of tolerance itself and that his mechanism of extending tolerance (his human rights stipulation) is quite arbitrary in the rights it covers and does not cover. In relation to Miller’s arguments about national self-determination, it was argued that the value of cultural identity and collective responsibility are not solid enough arguments for priority being given to the nation in questions of global justice. While both values are important, cultural identity is subject to change, and collective responsibility is only one interest that people may have in terms of justice; in this regard, it was argued that it is not clear why national self-determination ought to be the parameter by which principles of justice are decided. In relation to Nagel, it was similarly argued that it is not clear why the existence of sovereign relations between people ought to be a determinant of

justice claims; while sovereignty exists in some justice claims – i.e. those within a sovereign state – it is not the case that these are the only valid claims of justice that there can be. It was argued that there are circumstances of injustice in which there is no one demanding compliance with rules, as happens in the case of the active engagement of the will of people within a state, and that this is sufficient criteria to trigger requirements of justice.

The chapter also presented some objections to the empirical claims made by all three arguments. It is an important contention of the thesis that discussions of global distributive justice ought to strive to achieve a balance between what is morally desirable and what is empirically feasible. As the above paragraph argues, the thesis makes the case that the three statist positions on global justice are morally problematic; it was also argued that such positions deviate too far from the world as we find it. At the core of this is the idea that contemporary globalising processes are constituted in part by structures of global governance that are responsible for the development, elaboration and application of norms, rules and standards that have an important impact on people's lives but that do not fit easily into a national-international dichotomy. As was discussed in the previous chapter, a significant part of this wider picture is the participation in such structures of non-state actors, like global corporations and NGOs. While the previous chapter served to explain why CSR has emerged and why it takes the form it does, this chapter has set up the argument for the application of principles of justice to corporations by articulating the view that state-based conceptions of global justice do not cover the activities of these sorts of actors within global governance structures.

Thus the thesis so far has presented the emergence of CSR as a neo-Polanyian reaction to resistance of unregulated global capitalism that takes the form it does because of a Gramscian type of hegemonic control of CSR's mode of operation and agenda. What is being inferred here is that global corporations, as part of global capitalism, produce unjust outcomes, and the dominant resolution of such outcomes has emerged to be CSR. The present chapter has argued that statist conceptions of global justice do not take any of these circumstances into account, and thus omit circumstances that would seem to be central to questions of global justice. On the basis of having demonstrated the inadequacies of these accounts to the complex circumstances within which global corporations operate, the thesis now moves its attention to cosmopolitan conceptions of global distributive justice.

5: Cosmopolitan Conceptions of Global Distributive Justice

5.1 Introduction

The purpose of this chapter is twofold. First, the chapter critiques established cosmopolitan conceptions of global distributive justice. In the context of the previous chapter, this chapter develops the argument further by providing an analytical overview of the manner in which cosmopolitans have treated the matter of global distributive justice. Second, the chapter opens up the argument about the applicability of principles of justice to global corporations by discussing the political theoretical debate about the institutional make up of the basic structure. In terms of the overall thesis argument, this chapter serves the purpose of extending a cosmopolitan view of justice that incorporates the activities of global corporations, and opens up the possibility for a conception of justice being based on the contention that it is institutions that have profound effects on people's life chances that triggers the requirements of justice.

The basic normative idea of all cosmopolitan conceptions of justice is that the principles of justice should not be restricted to one particular society. The individual is the primary unit of normative concern. As discussed in the previous chapter, conceptions of justice that are restricted to the confines of particular territories have been rejected on both normative and empirical grounds. In relation to the argument of this thesis, the restriction of the scope of justice to peoples or states is highly problematic. For reasons outlined in the previous

chapter, in the context of contemporary intensified globalisation, the normative significance of the state, or indeed any territorial unit, is limited in terms of its ability to shape and govern people's lives. Accordingly, this chapter recognizes the centrality of cosmopolitan modes of thought in moving away from state-based assumptions, and in moving towards the development of principles of global distributive justice that pertain to contemporary circumstances.

The chapter also seeks to identify a gap in existing cosmopolitan thought with regard to the significance of global private actors in these circumstances. Although global corporations are widely viewed to be integral parts of what we now know as globalization (i.e. they are both part of and responsible for it), many treatments of cosmopolitan distributive justice either have not acknowledged this, or have not dealt with this in a systematic way. This chapter exposes this gap by detailing how most cosmopolitan thought with respect to justice has addressed the importance of the reform of global public institutions of governance. This is both necessary and valuable. However, the argument of this thesis is that such accounts are incomplete if we are to produce a meaningful idea of global distributive justice. The final section of the chapter consolidates this argument by drawing from existing debates within political theory pertaining to the make up of the basic structure, and highlighting how insights from this debate further the contention that global corporations are subject to the demands of justice.

The structure of the chapter is as follows. The first section details different variants of cosmopolitan thought. A loose characterization of different strands of

this mode of thought has been adopted for the purposes of clarity. These strands are methodological, moral, political and legal cosmopolitanism. There is clear overlap and blurring of the boundaries between these strands, and in many instances they are inseparable. However, it is useful to delineate these strands to overcome the difficulty of defining what it is to be “a cosmopolitan”.

The second section outlines the reasons why there is an argument for global distributive justice, as given by various cosmopolitan political theorists, as well as detailing the principles of global justice such theorists have developed. The third section sets up the argument in relation to how corporations may be integrated into a conception of global justice, by addressing explicitly the question of the types of institutions that make up the basic structure, and discussing the role played by legally noncoercive institutions within the basic structure, as well as the importance of publicity to the institutions to which principles of distributive justice apply.

5.2 Cosmopolitan Paradigms of Thought

In the context of the restriction of many political theories of distributive justice to the boundaries of the sovereign state, and the consequent difficulties such restriction presents us in the attempt to redefine the scope of distributive justice, the sentiments and motivations behind various cosmopolitan ideas offer a possible solution. The purpose of this section is to sketch a general picture of such ideas, and to distinguish between the different variants of the broad notion of cosmopolitanism. Cosmopolitanism is, as highlighted throughout, a mode of

thought that manifests itself in different ways; for heuristic purposes, this section is divided into methodological, moral, political and legal cosmopolitanism. Such categorization must not be seen as definitive – there is high degree of overlap between all categories.

5.2.1 Methodological Cosmopolitanism

The first general point to be made about cosmopolitanism is that it encompasses a particular outlook or worldview, part of the purpose of which (within the social sciences) is to move beyond what has come to be known as methodological nationalism. Whereas methodological nationalism assumes the centrality of the nation state as a focus for those concerned about “society”, a worldview shaped by cosmopolitanism does not automatically make this assumption, thus acknowledging the existence and significance of forms of society that are not coterminous with the nation state. Methodologically speaking, this is a significant departure within the social sciences, and although historically, cosmopolitanism has its lineage in the work of Kant, and his ideas regarding a federation of republican states, it is contemporary processes of globalization, and the challenges posed to assumptions regarding the sovereign state as a result, that have provoked renewed interest in cosmopolitanism. As such, in a similar way to the emergence of the cross-disciplinary study of globalization or global studies, cosmopolitan sentiments can be identified in disciplines such as sociology, law, political philosophy, politics, cultural studies, and social theory (Fine, 2003: 452). Indeed, cosmopolitanism has been suggested by some as a way in which the entire social sciences could be reconceptualised (Beck and Sznaider, 2006;

Beck, 2004), in order to reflect what is argued to be the cosmopolitan condition of the twenty-first century.

The question of which society cosmopolitanism is concerned with is necessarily ambiguous. Beck argues that cosmopolitanism ought to focus on every society, and none, as it were; he lists global cities, international organizations, bi-national families, multi-national co-operations as organizations in which cosmopolitan principles might be found (Ibid: 3). More generally, others see the entire world as the point of departure – as such, cosmopolitanism is a philosophy that encourages us to be “citizens of the world” (Vertovec and Cohen: 10). Others focus on the importance of global political institutions (Held, 1995), some of which already exist, like the UN or EU; elsewhere cosmopolitanism is evidenced in an emergent global civil society, comprised of non-governmental organizations, and transnational, or global, social movements (see for example Kaldor 2001).

Thus methodological cosmopolitanism offers two possibilities. First, it allows us to expand our scope of concern to nations, states, or indeed any form of territorial unit in particular. Consequently, methodological cosmopolitanism points us in the right direction in terms of finding an explanation for various political, economic and social processes that are supra national in origin. Second, in the context of the argument of this thesis, cosmopolitanism offers a theoretical framework, as well as a methodological strategy, for a “way around” the problems posed by state-bound theories of distributive justice, as articulated in the previous chapter. The ambiguity of the societal focus of cosmopolitanism

helps in this regard; by adopting an outlook that is not fixed on the nation state as the site of justice, cosmopolitanism opens up the possibility of thinking about distributive justice in contemporary globalising circumstances.

5.2.2 Moral Cosmopolitanism

Cosmopolitanism, then, involves the adoption of a particular perspective that does not place high value on territorial boundaries. While this is an inherently methodological position, it is at the same time an intrinsically moral, or ethical, position; the popular term for this aspect of cosmopolitanism is moral cosmopolitanism (See Beitz 1994; Beitz 2005a; Pogge, 2008: 175). A cosmopolitan worldview articulates a particular view of humanity, which expresses notions of empathy and solidarity with, and equality of, human beings. Nussbaum describes a cosmopolitan as “the person whose primary allegiance is to the community of human beings in the entire world” (Nussbaum, 1994). Pogge describes the central idea of moral cosmopolitanism as the idea that “every human being has a global stature as an ultimate unit of moral concern” (Pogge, 2008: Ibid). This ethical position feeds into cosmopolitan prescriptions for both politics and morality: “It is at once a theoretical approach towards understanding the world, a diagnosis of the age in which we live, and a normative stance in favour of universalistic standards of moral judgement, international law and political action” (Fine 2003: 452).

Most importantly, these notions are delinked from their association with territorial boundaries. This is not to argue that such boundaries do not matter, but

to argue that the unquestioned assumption that boundaries determine the moral worth of human beings is something that needs to be demonstrated explicitly:

Considerations of global justice have to start from the assumption that the moral relevance of the distinction between insiders and outsiders has to be demonstrated rather than presupposed. Put differently, the moral significance of boundaries cannot simply be postulated as a vital element of the political theory of the state (Linklater, 1999: 477).

Such a moral outlook has clear political implications, and directly opposes communitarian conceptions of justice such as Miller's. However, it should be noted here that the adoption of a moral cosmopolitan worldview does not imply the necessity of statelessness *per se* in order to identify oneself as cosmopolitan. Indeed a cosmopolitan worldview can introduce a moral critique to *inter-state* relations, where before "international moral skepticism" prevailed (Beitz, 1979: 181). The introduction of moral cosmopolitanism implies that "there are no reasons of basic principle for exempting the internal affairs of states from external moral scrutiny, and it is possible that members of some states might have obligations of justice with respect to persons elsewhere" (Ibid: 181-182). As such, cosmopolitanism does not necessarily mean that states have no meaning or value, but that morally speaking, state boundaries ought not to define the limits of moral concern. As was discussed in the previous chapter, certain ideas that have been used in defence of state based theories of distributive justice – such as citizenship, toleration, national self-determination and sovereignty – are all valuable, politically and morally speaking. However, what is problematic from this perspective is when such ideas become the limit of concern for a conception of global distributive justice.

Pogge makes a distinction within moral cosmopolitanism that is useful to addressing the role of global corporations. He differentiates between interactional moral cosmopolitanism and institutional moral cosmopolitanism (2008: 176-183); the former, he characterizes as an approach that assigns direct responsibility for the fulfillment of human rights to individual and collective agents; the latter assigns responsibility to institutional schemes. Pogge's focus is on the latter. While he sees both approaches as relevant and compatible, he focuses on the institutional one because it is as a result of the emergence of the global institutional order "that all unfulfilled human rights have come to be, at least potentially, everyone's responsibility" (Ibid: 177). Thus an interactional moral cosmopolitanism that focuses our attention on individual or collective agency in respect of injustice focuses on the incorrect thing; instead what we ought to be concerned about is the (global) *institutional* order that enables (global) injustice. This seems a key distinction for the argument presented here. The focus of the thesis is on global corporations and the part they play in the current global institutional order. Thus this dimension of cosmopolitanism enables us to view corporations as actors that have a role to play in a cosmopolitan morality, rather than as somehow separate from this. Furthermore, the institutional focus offers a step towards a *political* cosmopolitan outlook – in other words a political reform agenda.

The global institutional order within which global corporations operate is constituted and underpinned by a system of global capitalism. As such, an institutional moral cosmopolitanism points towards an inevitable critique of the system of capitalism. However, the relationship between cosmopolitanism and

capitalism seems ambiguous. For example, Fine sees cosmopolitanism as a way of thinking that declares itself *in opposition* to the economic imperatives of global capitalism (Fine 2003: 452, my emphasis), while Calhoun sees cosmopolitanism as largely the project of capitalism, flourishing in the top management of multinational corporations (Calhoun, 2002b: 109). However, in the sense that global corporations transcend the territorial boundaries of states in their activities, they are exemplary twenty-first century cosmopolitan actors; their impact is felt worldwide, and they are often ubiquitous.

The incorporation of a *moral* cosmopolitan critique of global corporations infers that such corporations warrant ethical assessment on the basis that they are not merely commercial actors whose sole purpose is to make a profit. In this sense, the widespread adoption of CSR policies by corporations is about them validating their *perceived* identity as moral cosmopolitan actors. However, it is also an invitation to develop a moral critique of their activities in a way that would not be possible if they did not adopt such policies. As such, corporations' own self-identification as moral actors through the practice of CSR does not simply endorse them as "moral"; instead it opens up an area of critique that perhaps is not the intention of CSR.

However, the move from viewing corporations as moral actors that have ethical duties, to viewing them as political actors that have duties of justice is a big one, and needs to be justified: moral and ethical commitments that span territorial boundaries are distinct from global distributive justice commitments. This could be expressed as the difference between humanitarianism and distributive justice;

as Tan articulates, the defence of a global ethic does not necessarily mean then a defence of global distributive justice, and vice versa (Tan, 2004: 23). Thus, the idea that corporations have duties of global distributive justice needs a political dimension – this is dealt with further on in the chapter. The next section, however, does some of the groundwork required for this, and articulates some of the ways in which cosmopolitan writers have expressed the *political* project of cosmopolitanism.

5.2.3 Political Cosmopolitanism

The political dimension of cosmopolitanism is the way in which the broad methodological and ethical or moral sentiments and worldview of cosmopolitanism, articulated in the above two sections, might be translated into the potential reform of political institutions. While the moral and methodological frameworks outlined above provide the basis for political cosmopolitanism, the former does not necessarily imply the latter – moral cosmopolitans may endorse a state-based system of governance (Hutchings, 1999: 153). Broadly speaking, political cosmopolitanism can be seen as a way of conceptualizing any political practice or institution that operates external to the nation-state, or as Hutchings describes it over, above or across the nation-state (Ibid: 154).

There are differences, however, in particular strands of political cosmopolitanism, both in how they assess the need for the reform they advocate, and in the type of reform they endorse. Hutchings differentiates between liberal internationalism, cosmopolitan democracy and radical democratic pluralism, while McGrew uses radical communitarianism in place of radical democratic

pluralism (See Hutchings, 1999: 153-181; McGrew, 1997: 254). In terms of the position of this thesis, it is useful at this stage to point out that liberal internationalism is premised on the idea that liberal democratic *states* provide the basis for political reform; as such, this strand of political cosmopolitanism is less useful to the argument being made here.

Where political cosmopolitanism does prove to be useful for this thesis is in widening the scope of the type of institutions that warrant reform, and the philosophical underpinnings of such reform. A prominent strand of political cosmopolitanism has emerged as a cosmopolitan democracy project, (Held, 1995). The project moves the parameters of concern beyond merely a state and inter-state system, to include global, regional, and local political institutions.

The case for cosmopolitan democracy is the case for the creation of new political institutions which would coexist with the system of states but which would override states in clearly defined spheres of activity where those activities have demonstrable transnational and international consequences, require regional or global initiatives in the interests of effectiveness and depend on such initiatives for democratic legitimacy (Held, 1998: 24).

The foundational principle of Held's cosmopolitan democracy is that of democratic autonomy, in which the "self" equates to "a structural principle of self-determination where 'the self' is part of the collectivity or the 'majority' enabled or constrained by the rules and procedures of democratic life" (1995: 156). The impetus for this model of cosmopolitan democracy is that the

“operation of states in an ever more complex international system both limits their autonomy (in some spheres radically) and impinges increasingly upon their sovereignty” (Ibid: 135). Importantly, what particularly characterizes these circumstances is the existence of multiple “overlapping communities of fate” (Held, 2000: 400), that are not delineated by nation states, and that are shaped by a variety of different political, social, economic, technological processes, and are essentially global in character.

As such, cosmopolitan democratic reform has included reform at the domestic, inter-state, or global level for some (Archibugi, 1998: 198-231), and reform at local, national, regional and global levels for others (Held, 1995: 235). Cosmopolitan democracy advocates reform of existing international institutions, such as the World Bank, the WTO or the UN, but also promotes the incorporation of cosmopolitan democratic principles within political institutions of governance at levels “below” the global. Held uses the example of environmental problems as one way in which such issues necessitate attention at all levels of governance (Ibid: 236).

Importantly, cosmopolitan democratic reform does not rule out the activities of private actors such as corporations. Indeed, the activities of corporations are seen by Held to be a way in which cosmopolitan democratic law might be entrenched into everyday life; he argues that the same principles of cosmopolitan democracy that ought to apply to institutions of governance ought also to apply to the internal activities of corporations (Ibid: 252). As such, company operations would have to be based around the principle of autonomy; Held envisages this

modus operandi as the provision of a framework in which the company does not violate the requirement to treat its employees as free and equal persons. In practice this would mean the pursuit of working conditions that:

[...] sustained health and safety, learning and welfare, the ability to engage in discussion and criticism (including of the company and its staff), and the capacity to join independent associations. But the entrenchment of democratic public law within companies would mean, above all, a commitment surmounting the economic sources of nautonomy⁵ and, thereby, to a 'basic income' and 'access avenues' to productive and financial property (Ibid).

Held advocates a reorganization of the free market around principles of democracy, requiring legislation that would tie processes of investment, trade and production to democratic processes. He sees this legislation as stemming from the global level, but being overseen and implemented at lower, more local levels of governance. Flouting cosmopolitan democratic law would bring the consequence of exclusion from the international trading system (Ibid: 255).

In relation to CSR as presently construed, given the purported inclusion of many democratic values within CSR policies, such as accountability and representation, some notion of cosmopolitan democracy is at least implied. Presumably, also, the UN Global Compact, in the way that it institutionalises CSR at the global political level, is a step in a cosmopolitan democratic direction. However, as is discussed in more depth in chapters six and seven of the thesis, the constraints of CSR as currently construed mitigate against the realisation of many cosmopolitan democratic values, in a similar way to how they mitigate

⁵ Held defines nautonomy as "the asymmetrical production and distribution of life chances which limit and erode the possibilities of political participation... Nautonomy refers to any socially conditioned pattern of asymmetrical life chance which places artificial limits on the creation of a common structure of political action. (Held, 1995: 171).

against the realisation of justice. CSR, in the sense of it being a form of self-regulation and predominantly at the discretion of corporations, does not come close to meeting the ideal of cosmopolitan democracy. More fundamentally, CSR is not about the reorganisation of the free market in any sense. However, Held's account can be seen as an attempt to strike a balance between the ideal, and the feasible. In terms of its engagement with the internal operation of a corporation, the account addresses some concrete realities. On the other hand, the implication of cosmopolitan democratic law seems to be that Held's proposal is global regulation of corporations. This idea, while similar to the ideal-aspirational theory outlined in chapter six, differs from the central focus of the thesis, which is how to develop a conception of global distributive justice that concedes to relevant and pressing facts about the world as we find it.

As so far articulated, political cosmopolitanism advocates the reform of political institutions of governance, at many different levels, and the application of principles of democracy to economic actors, like global corporations. Another vital part of the spectrum of political activity important to cosmopolitanism is global civil society. In the sense the global civil society actors provide a mechanism for advocacy and reform of political institutions (at all levels of governance), global civil society organisations exist within a renewed cosmopolitan global public sphere.

5.2.4 Legal Cosmopolitanism

Legal cosmopolitanism is the dimension within cosmopolitan thought that advocates the expression of cosmopolitan ideals through a mechanism of

universal rights and duties. In the sense that this is also about institutional reform, legal cosmopolitanism is not wholly distinct from political cosmopolitanism.

The idea of a cosmopolitan law finds its earliest incarnation in Kant's *Perpetual Peace*. Archibugi has identified different strands in the interpretation of Kant's ideas about cosmopolitan law: one view is that it is about creating an international society of individuals (although this is more aligned with cosmopolitanism per se, rather than cosmopolitan law). Another is that cosmopolitan law is about a set of rules designed to regulate a state's relations with citizens of another state (Archibugi, 1995: 430). Archibugi himself sees Kantian cosmopolitan law as the precursor to the type of international society aspired to by the UN and other international organizations, and as a forerunner to legal documents such as the Universal Declaration on Human Rights (Ibid). Held echoes this interpretation of Kant, stating that Kant viewed cosmopolitan law as a necessary complement to existing domestic and international law (1995: 227). Key notions within Kantian cosmopolitan law include universal hospitality and a pacific union between states (Ibid: 228-229).

Held grounds his articulation of the idea of cosmopolitan democracy within a cosmopolitan democratic law. This is a development of Kantian cosmopolitan law, but, importantly, framed by the principle of democratic autonomy; this "entails a duty to work towards the establishment of an international community of democratic states and societies committed to upholding democratic public law both within and across their own boundaries: a cosmopolitan democratic

community” (Ibid: 229). Yet this is a state-based articulation of cosmopolitan law, and presumably a different orientation is required in terms of corporations.

5.2.5 Summary

This section has detailed four different strands of thought that emerge from paradigms of cosmopolitan thought – methodological, moral, political and legal. In terms of methodology, cosmopolitanism requires the abandonment of methodological nationalism, or, the rejection of frameworks of thought that prioritise the nation-state as the most important form of society. While this could include extreme ideas that disregard the significance of the nation-state entirely, it does not necessarily have to be so. A cosmopolitan methodology could also entail the recognition of the importance of the nation-state, *in tandem with* other forms of society; what is important is that the methodological point of departure, as it were, is not solely defined by national boundaries.

Following on from this, the moral component of cosmopolitanism expresses an ethical sentiment that views the status of individuals as being equal across territorial boundaries. As such, the moral worth of a human being ought not be defined by the place in which they are born. This has particular resonance in relation to distributive justice; in this regard, it means that the assumption that the terms of distributive justice are limited to, and defined by, a domestic government and its citizens is morally unacceptable on the basis that *individuals* are viewed to be the focus of moral concern. However, as mentioned above, a cosmopolitan moral critique could equally apply to a critique of inter-state relations – on its own, it is not inherently a globalist position. To bridge the gap

between adopting a moral critique of corporations, and making the argument that they are political institutional actors that have distributive justice obligations, a political cosmopolitan perspective becomes important.

Political cosmopolitanism expresses an agenda of political reform of global governance institutions. While it is already manifest in existing institutions of global governance (for instance, the EU, the UN are viewed by some to be cosmopolitan political institutions), political cosmopolitanism also incorporates a normative agenda, detailing the sort of global political institutions that ought to be aspired to in the context of globalization. In this regard, global corporations are seen to be powerful actors within a system of global capitalism and are increasingly involved in government-like functions. As such, given that a cosmopolitan political agenda aims to respond to the challenges of contemporary globalization, the necessity for the involvement of corporations within institutional reform is clear. Legal cosmopolitanism is the manner in which a cosmopolitan reform agenda might be expressed through law.

Although four different strands have been identified, they ought not be viewed as entirely separate ideas. All of them overlap and intertwine; they have been separated here for purposes of clarity. In relation to CSR and distributive justice, it is the political dimension of cosmopolitanism that is most relevant, in the sense that political cosmopolitanism has been developed as something of a reform agenda for both global and domestic political institutions. As is articulated further on, it is this institutional dimension that is important in terms of global distributive justice. While CSR is perhaps grounded in a form of moral

cosmopolitan sentiment, it is argued in this thesis that global corporations and CSR represent a form of political institution to which principles of global distributive justice apply. As such, the thesis presents global distributive justice as a political cosmopolitan agenda of institutional reform.

5.3 Existing Conceptions of Cosmopolitan Global Distributive Justice: Justifications and Principles

Having outlined in the previous section the broad strands of thought that can loosely be categorized as cosmopolitanism, this section of the chapter turns to the matter of global distributive justice within a global sphere of governance. As mentioned above, most cosmopolitan conceptions of distributive justice are addressed at institutions of global public governance. The purpose of this section is to first discuss the justifications that have been given by various authors as to why distributive justice ought to be thought of in a *global*, rather than domestic, sense. Second, the aim is to outline the principles of global distributive justice they advocate. The overarching critique here is that little if any attention has been paid to the question of how corporations fit into cosmopolitan conceptions of global distributive justice.

The accounts of cosmopolitan distributive justice that have received most attention are those that have sought to re-articulate Rawls in a way that avoids the state-centrism that dominated *The Law of Peoples* (Beitz, 1979 and 1999; Buchanan, 2000; Caney 2005b; Pogge, 2002 and 2008; Tan, 2004). Such contributions to the literature on distributive justice are to be noted for the

manner in which they seek to cope with some of the complexity that processes of globalization present for thought about distributive justice, and for attempting to overcome the restrictions of Rawls's later work. All accounts acknowledge the presence of some form of global basic structure (although this is interpreted and articulated in different ways) that is important from the point of view of principles of distributive justice, and in some cases (Beitz) necessitates the extension of Rawls's difference principle to the world as a whole. In other cases (Pogge; Caney) new principles are developed which are, in the case of the former, based on negative duties not to harm that apply to individuals; and, in the case of the latter, based on a premise of global egalitarianism. This thesis does not seek to rule out any one of these attempts at resolving the difficulties of global poverty and inequality; instead the goal is to expose a gap within this literature relating to the significance of global corporations in such difficulties, and to point to how existing literature may contribute to filling this gap.

5.3.1 Justifications

This subsection summarises the various different reasons and justifications cosmopolitan writers have provided for thinking about justice in a global, as opposed to a domestic sense.

Many of these ideas take Rawls as their starting point, and have discussed and elaborated on the idea of a *global* basic structure, often characterized by levels of global interdependence that constitutes a scheme of social cooperation, such that principles of distributive justice are applicable to such a structure. The earliest articulation of this was Beitz's work (1979, revised in 1999), which perceived contemporary circumstances of international interdependence as such a scheme; this, he argued "lends support to a principle of global distributive justice similar

to that which applies within domestic society (Beitz, 1999: 144). This conception of justice was disputed by other Rawlsians, on the basis that it incorrectly makes justice dependent on pre-existing social schemes of co-operation (Barry, 1982, cited in Tan, 2004: 58; Caney, 2005a: 392), or that it incorrectly inverts the relationship between justice and institutions (Tan, 2004: 34). Beitz readdressed this criticism in later work and more recently has said that what matters for distributive justice is circumstances that “have the capacity to influence fundamentally the courses of their lives” (1999: 203), regardless of whether they are domestic or global.

The idea of the global basic structure has been articulated elsewhere. Buchanan has argued that the basic structure is constituted variously by international trade agreements, international financial regimes, and a global system of private property (Buchanan, 2000: 706). Some of its basic operating assumptions, such as state sovereignty, resource ownership, free trade, etc, are contributory factors in the perpetuation of structures of poverty and inequality (Tan, 2004: 25), and persisting in utilizing a “morality of states” approach is focusing on the wrong thing if what we are in fact concerned with is individuals’ lives (Ibid: 35-39). On this basis, it is “unjustifiable” to ignore the existence of this basic structure, as it has clear distributional effects (Buchanan, 2000: 706; Beitz, 2005b: 420). Fraser also invokes the notion of a basic structure of sorts (albeit with different language) when she argues for the necessity of “reframing” the question of justice to take account of the move beyond a Keynesian/Westphalian framework of analysis (2005 and 2008). She argues that the continuation of the use of such a framework of analysis perpetuates injustice, by shielding powerful actors, such as transnational private powers, from the scope of justice, on the basis of an

anachronistic belief that it is nation-states that we ought to be primarily concerned with (2005: 78).

Thus the idea of the global basic structure requires the abandonment of ways of thinking that assume the existence of an interstate system, and a focus on some form of global institutional structure. In terms of previous section, this is both a shift in methodological thinking and moral outlook away from the idea that the domestic state is the sole institution by which an individual's life chances can be determined; it also necessitates the development of a political agenda for reform of the global basic structure. There are both empirical and normative reasons for doing this. Empirically, many authors invoke the global system of finance, trade and investment, as well as global corporate power. On the basis of these empirical facts about the global basic structure, and the knowledge that it has distributional effects on people's lives, it is argued by authors such as Beitz that individuals within a global original position would choose *global* distributive principles, rather than domestic ones. The normative idea expressed within this is that what matters is the quality and type of life an individual experiences and that if the distributional effects of the global basic structure are such that their life is predominantly shaped by global factors, then the existence of territorial boundaries should not determine the principles of distributive justice that govern their lives. However, what is missing in existing accounts is the role that global corporations play in this global basic structure.

The idea that there exists a global basic structure, or "global institutional order" that triggers requirements of global justice is also part of Pogge's argument for

global redistribution (Pogge, 2002). The *moral* duty that triggers a requirement of global distributive justice is, however, the negative duty that “we” (meaning those who live in developed countries) must not cause harm. Pogge cites three aspects of the global institutional order that are responsible for sustaining global poverty and inequality: legal-political features, such as the International Resources Privilege and the International Borrowing Privilege (2001a: 19-21 and 2002: 112-116), which allow corrupt governments to legitimately borrow money, and use the resources of a country for corrupt purposes; a history of violent colonialism, which has created structures of inequality between developed and developing countries (2002: 203); and the fact of uncompensated exclusion of many developing countries from the use of much of the world’s natural resources (Ibid: 202).

What ties these three factors together, and what consolidates his claim regarding global justice is that they all violate a negative duty of justice - the duty not to inflict harm on others. Pogge develops an institutional understanding of human rights and justice, under which all have a duty to work for an institutional order and public culture that ensure that all members of society have secure access to the objects of their human rights (Ibid: 64-67). The appeal to negative duties is normally associated with libertarianism - the idea that we are only responsible for the harms for which we are causally responsible. On the basis of the above three factors, Pogge’s claim is that the current global institutional order is such that there is a direct line of causality between the situation of those who live in severe poverty and inequality and that of those who live in relative affluence. He formulates his proposal on the basis of the third factor listed above, the fact of

uncompensated exclusion of some people from the use of natural resources, because it “narrows the field by suggesting a more specific idea: those who make more extensive use of [...] resources should compensate those who use very little.” (Ibid: 203-4). Modesty, in terms of a proposed conception of global justice, is important according to Pogge, in order to build consensus between otherwise opposed views about how to approach global justice.

Caney makes his argument from a somewhat different premise. He grounds his cosmopolitan principle of global equality of opportunity (Caney, 2005b) by making the argument that existing theories of domestic justice, by their own reasoning, actually lead to the global application of their principles: “the standard justifications of principles of distributive justice entail that there are cosmopolitan principles of distributive justice” (the “scope 2 claim”; 2005b: 107). Tan (2004) makes a similar claim. This point is also made by Buchanan (2000). Caney contends that his account is not dependent on there being extensive economic globalization, like Pogge’s; rather it argues that cosmopolitan principles of justice are a natural extension of domestic liberal theories of distributive justice (2005b: 264). In the same way that we would object to better opportunities being afforded to a person within a society on the basis of their class or social status, we should also object to a situation in which a person is penalised because of the country or community that they are from (Caney, 2001a: 115).

O’Neill and Nussbaum use different language in their justification for advocating principles of global distributive justice; they both question the usefulness of

discussing “rights”, and prefer to focus instead on which agents and institutions possess which duties or obligations (O’Neill, 2000 and 2001; Nussbaum, 2003). According to both, the complexity of modern circumstances justifies not just the development of principles of global justice, but also a move away from purely contractarian, rights-focused approaches, and a move towards thinking about which institutions and agents possess what duties in order to fulfill such principles (O’Neill, 2001: 185); Nussbaum, 2003: 475). What is important here for the argument of this thesis is that both Nussbaum and O’Neill accept the possibility that non-state actors, such as multinational corporations, wield significant degrees of power over people’s lives, such that they ought to be subject to principles of global justice. As O’Neill states, the motivations of corporations being involved in matters of ethical concern is not important; what matters is the capacity they have to influence the type and quality of life people experience (2001: 193-4).

In summary, the justifications for global justice provided by the above conceptions have included: the existence of a global basic structure, as an aspect of contemporary processes of globalization; the inadequacy of the state as the primary unit of moral concern as a result of this; the concomitant assumption of the notion of rights being at the heart of global justice; and the inevitable development of globalised principles as a result of domestic principles of distributive justice. The purpose of this discussion is to strengthen the case for the motivation behind the argument of the thesis: that profound effects on people’s life chances suffice to require the application of principles of distributive justice. While all justifications provide valid reasons to think in

terms of *global* justice, this thesis agrees that it is the existence of a global basic structure that provides the most compelling reasons to think about a theory of global distributive justice.

The idea of a global basic structure is compelling for both normative and empirical reasons, as mentioned above. What the global basic structure offers the argument of the thesis is the idea that there is an unavoidable institutional structure that profoundly affects people's lives in a way that is significant for a conception of distributive justice. As is discussed further on in the chapter, there is a strong case that can be made from important arguments within political theory for the unavoidability of the basic structure in determining people's life chances, but also that global corporations ought to be included in this basic structure. While some of the conceptions discussed here include corporations, the specific activities of global corporations are not part of the general justifications provided. Thus the thesis attempts to synthesise ideas from within political theory regarding the profound effect of the basic structure with arguments regarding global corporations and CSR.

The principles proposed by the various cosmopolitans detailed above differ significantly. Beitz advocates a simple extension of the Rawlsian principles of distributive justice to the world as - due to the existence of a global basic structure - this is what parties in the original position would rationally choose. Pogge has developed various different proposals, the most comprehensive of which are a re-structuring of sovereignty along a vertical dispersion and a global tax on natural resources. In these ideas, he expresses a notion of political power

that is tightly linked with states, and state-based authority. Caney presents a principle of global egalitarianism.

5.3.2 Extended Rawlsian Principles

Beitz's proposal involves an extension of a Rawlsian difference principle to the global basic structure. It was noted above that, according to Beitz, it is the existence of this global basic structure that is responsible for the distribution of benefits and burdens; the role of distributive justice then is to decide the fairest way in which to do this (Beitz, 1999: 152). Thus, "principles of distributive justice must apply to the world as a whole and, derivatively, to nation states. The appropriate global principle is Rawls's difference principle, perhaps modified by some provision for intra-national redistribution in relatively wealthy states once a threshold level of international redistributive obligations has been met" (Ibid: 170). Pogge also made a similar proposal, in his earlier work, in which he argued that principles of justice apply between individuals across societies (Pogge 1989). Similar attempts have also been made by Kuper (2000), and Buchanan (2000).

The subjects of this global extension of the difference principle are primarily individuals; it is the position of the globally least advantaged person (or groups of persons) that is to be maximised, and as Beitz points out, there is no reason to assume that the membership of this group will be coextensive with that of a state (Beitz, 1999: 153). However, this does not rule out the participation of states within a global scheme of distributive justice. Indeed, Beitz argues that states may be more "appropriately situated" than individuals to carry out the

requirements of justice. What makes this sort of scheme different is that “the international obligations of states are in some sense derivative of the more basic responsibilities that persons acquire as a result of the (global) relations in which they stand” (Ibid).

The idea that the obligations of states would be derivative of the needs of individuals is discussed by Buchanan, who argues that ‘peoples’ (used interchangeably with states) would, if they knew of the existence of a global basic structure, choose principles for it, rather than just for their own societies (Buchanan, 2000: 708-709). As such, the existence of states is viewed as a practical element of the construction of principles of global justice, rather than, *qua* Rawls, the defining unit of organisation on which such principles would be based.

5.3.3 The Global Resources Dividend

Pogge’s ideas about global justice come from similar sentiments (i.e. the idea of a global basic structure and the need for a cosmopolitan inspired conception of global justice), and are based on the contention that there is global institutional order, part of which is the global economic order, that is responsible for much injustice. However, what he proposes is a somewhat different solution to global distributive justice, in the sense that he develops a concrete policy proposal. The thought behind this is that any proposed solution to world poverty ought to be easily achievable, and that modesty is important to build support (2008: 211). He proposes two central ideas, the first being a country-based solution based on natural resources, and the second being based on the intellectual property rights

and pharmaceutical companies. The first, the Global Resources Dividend (GRD), is a general proposal, while the second is a more specific policy proposal related to one particular industry.

The GRD proposes a tax on any natural resources that are exploited, the revenue from which will be ring-fenced to ensure all human beings can meet their needs with dignity (Ibid: 210-211). This is based on the idea that governments should have control of the natural resources in their territory (Ibid: 211), and that those who make extensive use of natural resources ought to compensate those who use very little. Pogge develops this proposal with modesty and likelihood of success in mind – he views it as a policy that is easy to implement.

However, it would seem that this type of proposal and Pogge's own assessment of the sovereign states system are in some ways speaking past each other. On the one hand, Pogge is adamant that a conventional system of state sovereignty cannot deal with global difficulties (Ibid: 201), and proposes the idea of a vertical dispersal of sovereignty to deal with this (Ibid: 174-201). The GRD is a country (read state, in this instance) based solution, and the idea regarding the vertical dispersal of sovereignty away from states still perceives the most important locus of political power as being tightly linked to territory:

Dispersing political authority over nested territorial units would decrease the intensity of the struggle for power and wealth within and among states, thereby reducing the incidence of war, poverty and oppression. In such a multilayered institutional order, borders could be redrawn more easily to accord with the aspirations of peoples and communities. (Ibid: 174-175).

So on the one hand what is being proposed is a redrawing of sovereign boundaries so that the global institutional order can deal with difficulties that are

globally pervasive and that do not begin and end with territorial boundaries; on the other, the main solution for the problem of global poverty relies on territorially bounded sovereign governments for its implementation and oversight. The GRD is cosmopolitan in outlook yet it is also a predominantly state-based solution to a global problem and therein lies the central difficulty.

Presumably the central rationale behind the proposal is to do with being able to garner support for such a proposal – i.e. that a proposal to eradicate global poverty should not be so difficult to implement that it can be immediately rejected. This is valid, and in many ways is a similar motivation to that which inspires the ideas discussed under concessive theory in the next chapter. It is important for justice to be realisable. However, Pogge's ideas display a degree of contradiction that is problematic. While seeking to reshape traditional sovereignty on the one hand, he reinforces it on the other.

A further rationale for the GRD is the contention that in the context of a free and open global market system, this tax on the use of natural resources would eradicate poverty (Ibid: 211). Thus the GRD is based on the contention that a state-based system of taxation on natural resources will alleviate global poverty and inequality under (global) free market conditions. As such, the inference is that justice is possible if the market is open and fair, and a small GRD exists to balance out the “ordinary centrifugal tendencies” of the market.

This leads to the second proposal that Pogge has developed which attempts to open up access to essential medicines for people who cannot afford them. The central difficulty that Pogge has with the global intellectual property regime that regulates pharmaceutical companies is that it negatively impacts upon the life chances of the world's poorest people. The proposal is too lengthy to detail fully here (Ibid: 222-261), but in summary it involves the reform of the global intellectual property rights of essential medicines so that the results of successful pharmaceutical innovation are provided globally as a public good.

The intricacies of the debate about the global intellectual property regime and Pogge's proposal are outside the scope of the thesis. However, the patents proposal is relevant to the topic of the thesis in that it is an example of a concessive approach to the subject matter of global justice, in the form of a concrete policy proposal. Like the GRD outlined above, part of Pogge's central concern is to develop ideas that are likely to be adopted; thus he makes the case that this proposal would be financially rewarding to such companies. By conceding to certain facts, Pogge focuses on the likelihood of success of the programme, and thus appeals to the profit incentive.

On the one hand it can be argued that Pogge does not concede enough. Pharmaceutical companies have prominent and large CSR programmes in which they deal with the question of access to essential medicines. However it is rare to see the question of intellectual property rights in relation to essential medicines discussed by such corporations in their CSR programmes. In many instances, global pharmaceutical companies' response to the question of access to such medicines is a discretionary act of charity (such as giving away a certain amount

of free drugs), through a process of CSR. It might perhaps be more fruitful to focus on the manner in which corporations deal with such questions – i.e. CSR processes, rather than through multilateral rules.

On the other hand, it can also be argued that this proposal concedes too much. If the central concern of the proposal is to open up access to essential medicines for poor people, then it seems that the realities of the market are given priority over the aspiration to justice. The problem with this is that if justice is made contingent on the free operation of market forces, presumably there will be instances when the latter impedes on the former. For instance, it has been argued by some that Pogge's proposal will not guarantee profit-making on the part of companies (Sonderholm, 2009). As well as this, the reliance of this proposal on the enforcement of just rules is problematic from the perspective articulated in the thesis. As will be argued later on, justice is always about ethos, not just obeying just rules.

Clearly, Pogge's aim is to strike a balance between what is feasible and what is desirable – this is a central concern of the next chapter of the thesis. The difficulty with the proposal he has laid out is that its feasibility is contingent on corporations making a profit, which in itself is contingent on market forces operating normally under just rules. In terms of justice, it is argued in the thesis that the latter scenario – market forces operating normally under just rules – that it may not be sufficient to guarantee justice. Justice may also require making just choices within those rules. In a concessive sense, additionally, Pogge's proposal

presents a dilemma because the account does not specifically engage with CSR, which is, in fact, the manner in which large pharmaceutical corporations address the question of TRIPS and essential medicines.

5.3.4 Global Egalitarianism

Caney discusses two different ways of approaching the question of global justice. First, he analyses what he calls the minimalist case: a series of policy measures, which he says could play a part in achieving global justice. These measures include debt cancellation, forms of global taxation (e.g. Pogge's GRD, the Tobin Tax), abolition of barriers to trade, fair trade/labour regulation, decreasing carbon emissions, aid, migration, civil and political rights, peace, and reform of international borrowing rights (Caney, 2005b: 122-134). No single one of these measures will work on its own, and many are interdependent, and some have priority over others (Ibid: 134).

However, his extensively developed proposal involves four cosmopolitan principles of global justice: persons have a human right to subsistence; persons of different nations should enjoy equal opportunities: no one should face worse opportunities because of their nationality; everyone, without any discrimination, has the right to equal pay for equal work (Article 23 (2) of the Universal Declaration of Human Rights) – Caney replaces “equal pay” with “equal remuneration”; benefiting people matters more the worse off these people are (cited from Parfit 1998: 12; 2005b: 123)

What such principles have in their favour, according to Caney, is that they avoid being overly onerous, so they are plausible, without avoiding the charge that they are too minimalist, like some subsistence-based arguments. Equally, these principles appeal to a broad church of theoretical perspectives, and do not rely on any one particular theory to back them up. Finally, if Caney's "scope 2 claim" is true, then there is no option but to accept these principles; as such, if we accept principles of distributive justice at the domestic level, and we accept that domestic theories of distributive justice lead inevitably to cosmopolitan ones, then these principles are an unavoidable consequence (Ibid: 123-124).

The background to a situation in which such principles would be upheld is a multi-level system of governance in which supra-state authorities monitor the conduct of states and powerful social and economic institutions. In this regard, Caney subscribes to the views of Held and Linklater that globalization necessitates global (cosmopolitan) democratic institutions. He states, "the rationale for the democratic right to exercise control over the institutions and processes that affect persons' ability to exercise their rights entails (given globalization) that there should be a global democratic political framework" (2005b: 159). It is this rights-based approach that informs Caney's suggestions for the types of global political institutions that need to exist so as cosmopolitan principles of distributive justice can be protected at the global level. He lists: a new economic institution with an overview for all economic matters that can coordinate the IMF, the WTO and the World Bank in the pursuit of global norms of distributive justice; the creation of a permanent UN volunteer force; strengthening the role of the International Court of justice; and highlights that

there is a compelling case for a cosmopolitan court for transnational corporate wrongdoing (Ibid: 162). This approach involves an adaptation of sovereign statehood, in which the relevant political units lack certain features of more traditional conceptions of sovereignty, such as comprehensiveness and supremacy (Ibid: 163-164).

Caney provides a comprehensive list of areas for reform in order to fulfill his principles of global justice. However, the role private actors like corporations play is not addressed explicitly. A high bar of global egalitarianism is set as the ideal principle of global justice, yet without incorporating global corporations within his list of institutions that ought to be reformed, it is difficult to see how such a principle would work. The stipulation of “equal remuneration for equal work” goes some way towards this, but unless a systematic analysis of where corporations fit into the picture of global justice is provided, we don’t know how this could be guaranteed.

This subsection has outlined three well-known conceptions of global justice – the extension of Rawlsian principles to a global level; a Global Resources Dividend; and principles of global egalitarianism. In none of these conceptions, is it made clear how or where global corporations might become part of the wider picture, and as such, we do not have a comprehensive analysis of the role corporations might play in global distributive justice. Although all the above conceptions are set out as cosmopolitan conceptions, they are all in some way based on the assumption of state-based authority, either through international organisations or through the activities of states at the international level. As mentioned earlier, it

is not the argument of the thesis that this is in itself incorrect, but that it is instead an incomplete notion of global distributive justice. The next section of the chapter discusses how corporations may be integrated into a more complete conception.

5.4 Profound Effects on People's Life Chances and the Publicity Requirement: the Case for the Application of Principles of Global Distributive Justice to Corporations

The previous section raises the question of the institutional structure that is of concern to a theory of justice, i.e. the site of justice. Within liberal political theory, how can a justification be made for the inclusion of global corporations within a theory of justice? It is the argument of the thesis that principles of global distributive justice that are *limited* to such state-based institutions are incomplete to the extent that they do not pay due regard to the impact that global corporations have on people's lives. This debate has primarily been discussed in relation to a domestic society and predominantly in an abstract sense; as such, the argument being made here is extrapolated from such circumstances, and the thesis focuses on the central ideas of this debate, rather than the intricate details. However, the debate that has emerged over the type of institutions that are included within the purview of justice is useful to the thesis argument in the sense that it differentiates between legally coercive and legally noncoercive institutions and the role they play in distributive justice. What is at issue here is whether justice requires compliance with (just) rules, or whether justice requires more than that, in the form of an egalitarian ethos within a society.

The next subsection discusses the Rawlsian perspective on the institutional make-up of the basic structure, and Cohen's critique of it as being either arbitrarily limited to the coercive outline of society, or as including "non-public" institutions such as the family or the market economy. Cohen's central contention is that justice should be concerned with those institutions that display a profound effect on people's life chances; the thesis is in agreement with this. The final subsection discusses Williams's contribution to this debate, which argues that Cohen's wide construal of the basic structure is too demanding a conception of justice. Instead, Williams's contention is that justice, while applicable to the institutions that have this profound effect, also requires that there is an element of publicity to the sets of rules and institutions it applies to. The thesis contends that global corporations fulfill both these criteria.

5.4.1 The Institutional Make-Up of the Basic Structure

Recall that the basic structure is, for Rawls, the primary subject of justice, and is made up of the *background* institutions of a society, to which principles of justice apply. There are three specific instances within Rawls's writing where the make up of the basic structure is addressed. More formally, he describes it as:

[...] the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arise through social cooperation. Thus the political constitution, the legally recognized forms of property, and the organization of the economy and the nature of the family all belong to the basic structure. (Rawls, 2005: 258)

Elsewhere, he states that the major institutions of the basic structure

[...] define men's rights and duties, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are *so profound and present from the start*. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting positions over others, these are especially deep inequalities... *It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply...* The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society (Rawls, 1999: 6-7; emphasis added).

Thus the basic structure consists of the legally coercive institutions of society – property ownership, the political constitution, for instance. Legally noncoercive institutions, such as the family, are also mentioned, and the stipulation that the basic structure includes institutions whose effects are “profound and present from the start” would seem to imply that principles of distributive justice apply to such institutions.

The issue of the inclusion, or not, of the institution of the family within the basic structure has been the basis of feminist critique of Rawls (see for example Okin 1989 and 1994). The content of this critique is not directly relevant to the argument being made here; however, its existence is important in the way that it highlights the differentiation that has been made between legally coercive and legally noncoercive institutions in relation to distributive justice.⁶ While Rawls's

⁶ The term “legally noncoercive” requires explication. What is meant here are institutions that exert a coercive force on the shape and type of life that people experience, but that do not exert that coercion through legal means, but rather through informal social pressure. This interpretation derives from Cohen's position regarding the basic structure. Regarding this, he uses the family as an example, stating “Family structure is fateful for the benefits and burdens that redound to different people, and, in particular to people of different sexes, where “family structure” includes the socially constructed expectations which lie on husband and wife... Yet such expectations need not be supported by the law for them to possess informal coercive force... Here, then, is a circumstance, outside the basic structure, as that would be coercively defined, which profoundly

view on this matter seems to be an unresolved ambiguity in the literature (Nussbaum, 2003: 500; Cohen, 2002: 137), perhaps his final statement on this matter, given in “The Idea of Public Reason Revisited” (2001b: 156-164), can be taken to be conclusive:

[...] the primary subject of political justice is the basic structure of society understood as the arrangement of society’s main institutions into a unified system of social co-operation over time. The principles of political justice are to apply directly to this structure, but are not to apply directly to the internal life of the many associations within it, the family among them... [the principles] do impose essential constraints on the family as an institution and guarantee the basic rights and liberties, and the freedom and opportunities, of all its members. This they do, as I have said, by specifying the basic rights of equal citizens who are the members of families. The family as part of the basic structure cannot violate these freedoms (Ibid: 158-159).

Thus, in this statement, he makes clear that while institutions such as the family have obvious importance in terms of the type of life a person experiences, there is a limit to which principles of justice can interfere with the internal operation of legally noncoercive institutions. This limit is indicated by the specification of basic rights and liberties, as guaranteed by legally coercive institutions. As such, principles of justice can shape institutions such as the family, but only insofar as those who are affected by such institutions are protected by their rights as *citizens*. The question of how this statement, and others related to the family, have been interpreted and discussed by Rawlsian critics is not for further discussion here. The more general question of how the profound effects of legally noncoercive (yet political) institutions ought to be dealt with in relation to

affects people’s life chances, through the choices people make in response to the stated expectations, which are, in turn, sustained by those choices” (2002: 139).

distributive justice and corporations forms, however, a central part of the argument of the thesis.

Ultimately, Rawls's position is that justice applies to a coercively defined basic structure, in which people are free to make their own choices, within just rules. This position requires brief explanation (for a more thorough discussion, see Cohen 1991 and Rawls 1999). This coercive definition of the basic structure is to do with the creation of incentives for society's "talented people". Rawls's difference principle requires the acceptance of some inequalities so that those talented people will have incentives to take socially beneficial jobs or to work harder, which will be advantageous for society's least well-off. Thus Rawls's belief, which is manifested in the difference principle, is that a just society is one in which any inequalities are of the greatest benefit to the least advantaged in that society. In short form, the idea is that it is just for talented people to be rewarded disproportionately to people who are less talented, because this discrepancy in reward ultimately will pay off for the latter group of less talented people, in the form of taxation paid by the more talented people.

There are two bases for Rawls's view. One is that people ought to be free to make their own choices with regard to how hard they work and how productive they are; the same idea motivates the issue of the family and the basic structure. The second one, more relevant to this argument, is to do with background justice. In an ideally just Rawlsian society, the inequalities that are inevitable in a society are corrected by the basic structure of society:

[...] we start with the basic structure and try to see how this structure itself should make the adjustments necessary to preserve background justice. What we look for, in effect, is an institutional division of labour between the basic structure and the rules applying to individuals and associations and to be followed by them in particular transactions. If this division of labour can be established, individuals and associations are left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary conditions to preserve background justice are being made (Rawls, 2005: 268-269).

Thus, on Rawls's coercive definition, justice is possible when the basic structure, governed by Rawls's two principles of justice, is the broad coercive outline of society, and *not* comprised of individual's choices or the activities of private associations.

5.4.2 The Basic Structure and a Just Ethos

This idea, however, is not without disagreement. Most notably, Cohen contests the make up of the basic structure and his arguments form a point of departure for the thesis, in terms of making the argument that justice applies to global corporations (see Cohen 1997, 2002 and 2008). On his view, Rawls's position is undermined by his coercive definition of the basic structure. In this regard, Cohen presents Rawls's dilemma thus:

[...] he must either admit application of the principles of justice to (legally optional) social practices, and, indeed, to patterns of personal choice that are not legally prescribed, both because they are the substance of those practices, and because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter (Cohen, 2002: 139).

As such, the way Cohen views it, Rawls's argument presents two possibilities about the institutional make-up of the basic structure. Either the basic structure contains legally noncoercive institutions – Cohen uses the examples of the market economy and the family – and thus the principles of justice apply to the circumstances *within* those institutions; or, as he says, the basic structure and the application of principles of justice are *arbitrarily* limited to legally coercive institutions. This is an arbitrary choice in the sense that, according to Cohen, justice and a society's ethos are linked in an important way.

The connection that Cohen sees between justice and ethos requires explanation. For Cohen, it is important from the point of view of justice that there is some sense of fraternity or egalitarianism within a society, a sense that people are willing to comply with certain egalitarian requirements. This is because he sees society's ethos and the institutional make up of the basic structure as being interlinked in the way in which they determine people's life chances, i.e. it is not the case that the basic structure determines people's life chances without any impact from society's ethos. In this regard, Cohen uses the example of the consequences that widespread use of the birth control pill had on the American basic structure in the 1970s (2008: 378). Thus, he rejects the idea that a social ethos is entirely determined by the basic structure, arguing instead, "If the basic structure is said to be the site of justice because of its influence on the ethos, then, by the same argument, the ethos is the site of justice" (Ibid). Thus rules and ethos are co-constitutive, and in order for people, or society, to behave in a particular way, there does not have to be legally enforceable rules to get them to

do so. It is often enough that social norms are created, and that pressure exists to conform to these norms:

The constraints and pressures that sustain the noncoercive structure reside in the dispositions of agents which are actualised as and when those agents choose to act in a constraining or pressuring way...When A chooses to conform to the prevailing usages, the pressure on B to do so is reinforced; and no such pressure exists, the very usages themselves do not exist, in the absence of conformity to them. Structure and choice remain distinguishable, but not from the point of view of the applicability to them of principles of justice (Cohen, 2002: 138).

Cohen's argument, then, is that whether or not a society is just is dependent on people making just choices in what might be called their private transactions; within any society, there exist informal social pressures for people to make particular choices and to conform to particular expectations - he mentions the socially constructed expectations of husband and wife as an example (Ibid: 139). As such, institutions do not have to be *legally* coercive for them to impact upon how just a society is. It is enough that such institutions shape and govern people's lives and choices and that this creates a certain ethos within a society, to which there is a social or informal pressure to conform.

Furthermore, in the absence of a just ethos, according to Cohen, it is the least advantaged people within a society who will suffer the most. Within a Rawlsian theory of justice, there is an assumption of pre-existing inequalities within a society, and it is these inequalities that the application of principles of justice to the basic structure is supposed to rectify. If justice applies only to the legally coercive institutions of society, and the informal force of a society's ethos is viewed as a separate (or private) matter, then it is inevitable that those who are worse off initially will suffer more. As Cohen argues: "by virtue of

circumstances that are relevantly independent of coercive rules, some people have much more power than others to determine what happens within those rules” (Ibid). This disproportionate power that some people have to determine the rules results in what Cohen terms market maximizing behaviour, which most often will produce “severe inequalities and a meagre level of provision for the worst off“(Ibid: 140).

5.4.3 Global Corporations and The Basic Structure

This debate has consequences for applications outside of the field of political theory, and presents an opportunity to make an argument for the extension of principles of justice to global corporations. As Cohen put it, the debate about what the basic structure consists of is a debate about “where the action is” (1997). If we are not concerned with the *correct site of justice* (where the action is), then we are missing out on circumstances that are responsible for instances of injustice. In relation to corporations, what this debate encourages us to consider is this: does justice require that corporations merely abide by the rules of the game (the rules of the market), or does justice require more than that?

This thesis argues, in agreement with Cohen, that it is enough that legally noncoercive institutions, such as global corporations, display profound effects on people’s life chances in order for principles of distributive justice to apply. This brings the critique of chapter four, and the critique of this chapter, one stage further: in chapter four, it was argued that the restriction of justice to the state neglects many circumstances of injustice. In this chapter, it has been argued that cosmopolitan conceptions of justice, which are not restricted to the state, have

mainly been directed at global public institutions of governance. What this debate about the basic structure brings to the thesis is the idea that justice is not just about the laws that states and global public institutions of governance pass. Justice is also about non-state actors, and their choices, that have a profound effect on people's life chances. As Cohen puts it:

Why should we care so disproportionately about the coercive basic structure, when the major reason for caring about it, its impact on people's lives, is also a reason for caring about informal structure and patterns of personal choice? (Ibid).

Thus, in the same way that restricting principles of global distributive justice to a territorially-bound state omits many of the unjust circumstances a satisfactory theory of global distributive justice would seek to address, ruling out all legally noncoercive institutions from such principles neglects the fact that such institutions can be equally as important as the political constitution, or legal structure of a domestic society.

In relation to corporations, they clearly operate within a coercive basic structure – there are legal obligations that they must abide by. However, there are two elements to global corporations that make the designation of them as institutions that have a profound effect on people's life chances important. Firstly, although there is always a legal (coercive) structure to which corporations must conform, the globality of many large corporations means that the same corporation must abide by different rules in different territories. In essence, corporations are able to choose which legal rules they must abide by. This state-by-state approach means that there is no overarching principle by which corporations must abide.

Thus the rules by which corporations currently operate are not set up to cope with the global mobility of corporations.

Secondly, and relatedly, CSR policies have emerged as the corporate solution to addressing the question of responsible corporate behaviour within global corporations that spans territorial boundaries. In a sense, CSR is a particular ethos that has come to prevail across the corporate world. It has emerged in many cases in place of state-based regulation of corporations, and for most large global corporations is a standard aspect of their corporate profile. In the same way that Cohen argues that the ethos that exists within a domestic society is important in relation to distributive justice, so too is the fact that CSR has become a prevalent ethos. The phenomenon of CSR, as discussed in chapter three, came about as a result of a widespread perception that corporations were behaving in an unjust manner. A corporate *response* to this perception was the creation of an ethos amongst large corporations of self-regulation and self-monitoring, rather than changing the rules within which they operate. Thus the question of corporate responsibility is being primarily dealt with through the use of CSR policies, which can be seen as a particular type of ethos, albeit one that is dominated by the requirements of global capitalism, as is discussed in chapter three. The rules within which corporations operate are seemingly less important to such questions, the focus instead being on voluntary self-regulation.

To summarise the argument so far, the thesis argues, in agreement with Cohen, that justice is about more than regulating the coercive rules of society; global corporations cannot be described as being coercive in a legal sense, but they have

a profound effect on people's life chances. This case can be made because, following Cohen, the types of choices that people make are important for justice, in the way that choices are manifested in an ethos, and an ethos in turn affects the rules that are made. In this co-constitutive way, in order for people to live a just life, we must be concerned with the rules by which society is organized, but we must also be concerned with the choices that are made within those rules. Global corporations operate within a legally coercive structure that changes on a state-by-state basis. Globally, their activity is to a significant extent self-regulated through the use of CSR policies. Thus while an ethos of "responsibility" has emerged as a result of allegations of corporate injustice, the rules within which they operate rarely change.

However, a coercive reading of the global basic structure to which principles of global distributive justice would apply, would omit any circumstances of injustice caused by corporations (apart from those circumstances that are caused by activities that *break the rules*). And yet if we are concerned with justice *per se*, then it would seem an omission too far to proceed with such an interpretation of the basic structure. It is the contention of the thesis that a purely coercive reading of the global basic structure is unconvincing.

5.4.4 The Publicity Requirement

Cohen did not address the specific questions of corporations, and this debate is generally viewed as a critique of Rawlsian theory. However, it is reasonable to assume that the conclusion of his argument, if applied to corporations, would be that it is unjust for corporations to engage in market maximizing behaviour. As

such, justice requires both the existence of just tax rules, by which corporations must abide, as well as corporations themselves restricting the extent of the profit that they make. This is quite a demanding view of justice. In reply to this, it could be argued, as per the Rawlsian argument, that restrictions on corporate profit making would constitute a restriction on liberty, and indeed justice requires that such profits are made, in order that they are of benefit to less advantaged groups within society.

This objection is important. A view of justice this demanding is unlikely to be realised, but also it is not clear that it would be desirable. Aside from the question of incentives and profit-making, there is also the question of whether justice requirements ought to extend that far into all forms of “private” activity. In this regard, Williams (1998) has resisted elements of Cohen’s argument on the grounds that justice is about *public* rules; this objection is also important for the thesis argument.

Williams perceives a difficulty with Cohen’s conception of the basic structure. While he views market-maximizing behaviour as being problematic in terms of justice, he contends that a different account of the basic structure is possible (1998: 232). Recall that the basic structure is first and foremost a set of *institutions*, and the manner in which Rawls defines institutions suggests that they must be in some sense *public*. Williams uses elements of Rawls’s discussion of institutional publicity to highlight the way in which Cohen’s critique fails to address an important element of the basic structure, and thus an important aspect

of justice – that inclusion in the basic structure requires an institution to display elements of publicity.

It is important to note here the manner in which Williams uses the word “public”. He uses Rawls’s definition of institutional publicity, and it is worth elaborating this definition here for clarification. As Rawls states:

[...] by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur. As examples of institutions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property (Rawls, 1999: 47-48).

The publicity element of an institution is that which enables everyone who is affected by that institution to know what the rules specified by that institution expect of them:

A person taking part in an institution knows what the rules demand of him and of the others, he also knows that the others know this and that they know that he knows this, and so on. To be sure, this condition is not always fulfilled in the base of actual institutions, but it is a reasonable simplifying assumption. The principles of justice are to apply to social arrangements understood to be public in this sense ... The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible. There is a common basis for determining mutual expectations. Moreover, in a well-ordered society, one effectively regulated by a shared conception of justice, there is also a public understanding as to what is just and unjust. (Ibid: 48-49).

Williams uses this specification of institutional publicity to make the case that “the [basic] structure comprises those actions which realise public rules in a way

that exerts profound and unavoidable influence on individuals' access to social primary goods" (Williams, 1998: 234).

However, as Williams acknowledges, there is still a potential claim that this is an arbitrary distinction. Just as a purely legally coercive conception of the basic structure may be thought to be arbitrary, so too may one that defines it as a system of public rules. Williams answers this claim by invoking Rawls's requirements of not just publicity, but also *stability*. This denotes that people within a society know, understand and accept a conception of justice, and that they comply with such a conception because they know that others will, and that such a conception is congruent with their other values (Ibid: 244). This produces stability over time within a society, and is viewed by various authors as both instrumentally and intrinsically valuable (Ibid).

Williams' conclusion, then, is that publicity is an integral part of justice. On his reading, Cohen's wide construal of the basic structure neglects the importance of publicity within a conception of justice. Based on a conception of institutions as public systems of rules, that are known, understood and complied with by those who are affected by them, Williams' argument is that our concern in relation to justice is those sources of inequality that can be regulated by *public* rules. Given the fact of limited information (i.e. that it is most often impossible for everyone to know about the "extent to which individuals suffer unchosen labour burdens, or achieve their full productive potential" Ibid: 245), we have to reject conceptions of justice, like Cohen's, that are too demanding in this sense. On this

basis, Williams favours, as he puts it, “trusting in tax rather than moralized markets as the instrument of egalitarian justice” (Ibid: 246).

Cohen’s arguments, as well as Williams’s publicity requirement, are very useful to the argument being made here. There are two aspects to this. First, Cohen’s wide construal of the basic structure opens up the claim that global corporations are susceptible to principles of justice. The phenomenon of CSR demonstrates some form of acknowledgement by corporations that their behaviour is a source of some injustice, or at the very least that their behaviour profoundly affects some people’s life chances, and that their scope of responsibility is more than that of profit-making. Thus if we have a conception of the basic structure that allows for the inclusion of institutions that have a profound effect on people’s life chances, (not just legally coercive institutions that have this effect), we can view this acknowledgement as corporations placing themselves within the realm of discussion about what constitutes responsible corporate activity, and thus what constitutes justice. While it has been argued that CSR is largely a way of avoiding state-based or multilateral regulation, this is in some senses less relevant than the actual fact of admission by corporations of their responsibilities extending beyond their remit as commercial actors.

Secondly, in relation to the publicity requirement, a characteristic of CSR policies is that their content is made publically available to anyone who might seek them out. Indeed, there is a *concerted effort* by many corporations to make these policies public. Although it may be claimed in this regard that such publicity is for promotional purposes (or, the “wrong reasons”), this would not

seem to matter in the sense that the information is still within the public domain. As is discussed further in the next chapter, the extent of corporations' publicity about their activities, as well as the type of information they make public, is a crucial part of justice. However it suffices here to state that CSR constitutes a practice whereby corporations make public the standards and rules which they expect themselves to meet and abide by. Furthermore, they also make public their performance in relation to such rules. In the case of CSR that is underpinned and instituted by a global governance institution, for instance the UN Global Compact, it is evident that such policies are devised, monitored and communicated in a *public* manner. This is indicative of a wider contemporary phenomenon whereby governance activities are not just executed by state and state-based authorities, or indeed by international organizations that are underpinned by state-based authority. Within structures of global governance, "private" organizations, like global corporations, are to a great extent involved in the articulation, development and maintenance of sets of public rules that purport to govern their behaviour. Similarly to Cohen, it is not Williams's intention to deal with an issue such as global corporate activity; however from the perspective of the thesis, the argument about publicity strengthens the case being made here.

Thus Williams's argument pitches itself in between that of Rawls and Cohen. While he disputes Cohen's ambitious contention that the Rawlsian conception of justice requires the application of principles to all private transactions, because of the need for publicity and stability, neither does he rescue the Rawlsian position. Williams does not argue that individuals may maximise their own gains in the

market if it is constrained by a just tax structure, which is what seems to be Rawls's position. Instead, Williams is arguing that some kinds of ethos are publically realisable, while others aren't. His example is the family, which he describes as unjust, say, the choice to send a son rather than a daughter to higher education. This does not break any rules, but it is reasonable to say that an ethos that accepts such choices is unjust. Similarly with corporations, if the right to a minimum wage is not enforced by law in a particular country where a corporation has operations, and that corporation therefore underpays staff in comparison to operations in other countries, no rules or laws have been broken, but again it seems reasonable to suggest that the public ethos underpinning this choice is unjust.

In summary, the thesis contends that this scenario, in which (a) corporations have a profound effect on people's life chances, and (b) corporations are involved in the development of, and are regulated by, sets of public rules that are known (or can be known) to those who are affected by them, warrants the application of principles of global distributive justice to their activity. As discussed in this section, the make up of the basic structure is a key element to the argument of the thesis. What this argument brings to the thesis is a strong case for the inclusion of corporations within a theory of global distributive justice. This is not an uncontroversial contention. What is at issue here is a re-construal of justice that is problematic for widely held conceptions of justice that rely on a "moral division of labour" (Nagel, 1991), such that individuals and groups should be free to act as they wish within coercive rules designed to achieve justice. The thesis agrees that the coercive rules of states (for it is presumably only states that

can be described as coercive in the legal sense) are most certainly important. Such a view, which concentrates on coercive rules, is effectively the focus of Pogge and the other cosmopolitan writers that were critiqued earlier in the chapter. Under these sorts of views, the argument in relation to corporations is that justice requires that the rules be altered so that corporations must abide by just rules. However, the original contribution of the thesis is the argument that global corporations are in fact involved in the creation and maintenance of the rules and standards which govern their activity in a self-regulated sense, that to a great extent this is done in a public way, and so they ought to be a focus of concern within a theory of global distributive justice.

5.5 Conclusion

Having rejected state-based conceptions in the previous chapter, it was necessary in this chapter to provide a broad outline of the different strands of thought within cosmopolitanism, and more specifically to discuss distributive justice in relation to this. Cosmopolitanism, in the way in which it offers a methodological alternative to territorialism, is the obvious framework within which a conception of global distributive justice ought to exist. As well as a methodological position, cosmopolitanism also encompasses a moral perspective regarding the importance of the human being as a focus for justice. Both the methodological and moral aspects of cosmopolitanism are played out in political and legal cosmopolitanism, which advocate programmes of reform for global governance institutions, based on the idea that state-based reforms are unable to contend with the supra-territorial processes of globalization.

In moving to cosmopolitan conceptions of global distributive justice, the second section of the chapter outlined the justification given by various authors as to why we ought to think about justice in a global, rather than domestic sense. These justifications included the existence of a global basic structure, the moral duty we have not to inflict harm on others, the inevitable progression of liberal domestic principles to cosmopolitan global principles, and the inadequacy of the state in dealing with globalising circumstances. The thesis aligns itself predominantly with the first of these justifications, i.e. the existence of a global basic structure, but argues that this ought to explicitly include non-legally coercive institutions, such as global corporations. The remainder of the section detailed the various different principles of global distributive justice, and made a similar point - that a complete theory will include the activities of global corporations.

The fourth section of the chapter made use of a debate within political theory about the institutional make up of the basic structure, in order to provide a basis on which corporations can be incorporated into distributive justice. The thesis agrees with Cohen's argument that the basic structure of society includes legally noncoercive institutions, and as such principles of justice are applicable to such institutions. However, it is also argued, in agreement with Williams, that institutions that are subject to principles of justice necessarily need to be public ones – public in the sense that their rules and practices are known and understood by all those affected by them.

Thus, on the basis of what has been discussed in this chapter, the criteria for inclusion into a theory of global distributive justice can legitimately be an institution that displays profound and lasting effects on peoples' life chances, and that conducts its activities in a public manner. Global corporations and corporate social responsibility policies meet this description. The next chapter develop a set of proposals regarding justice and corporations that reflects this argument.

6: Aspiration and Concession: Global Corporations and Principles of Global Distributive Justice

6.1 Introduction

The thesis has argued so far that it is in circumstances where institutions display a profound effect on people's life chances that principles of distributive justice apply; it has also been argued that global corporations are an instance of this. In terms of justice, this is the relationship that is of significance. Two primary justifications have been discussed for the contention that global corporations are subject to principles of global distributive justice. The first is that state-based theories of distributive justice do not adequately deal with the globalised circumstances within which global corporations operate. The second is that while a cosmopolitan-oriented approach is justified, existing cosmopolitan ideas regarding global justice are incomplete. In their dominant focus on the reform of global public institutions of governance, most cosmopolitan conceptions of justice neglect the profound effect on life chances that global corporations have, and thus a coherent normative set of principles for the activities of corporations has not yet developed.

This chapter aims to set out such a set of principles, and in doing so expands the argument in relation to profound effects, by setting out a proposal for justice that reflects the complex political-economic circumstances within which corporations operate. One of the central issues in this regard is that of feasibility, which is in

tension with the normative ideals that underpin the central argument of the thesis. We live in a world that is not perfect, and corporations, as we find them in the world, are not perfect, and most likely never will be. This imperfection is in the context of the organisation of global economic life around the requirements and demands of (global) capitalism. In the context of the dominance of state-based theories of justice, global corporations are most usually missed out in discussions about what constitutes global justice. As such, a tension exists between what ideal circumstances of justice would mean and the *reality* of the existence of corporations. There is also a tension between an ideal, and what is actually feasible or achievable. On this basis the thesis seeks to address both demands for what Estlund calls “aspirational” theory, and for what he calls “concessive” theory (2008: 258-277). The thesis proceeds from the contention that articulating the ideal circumstances of justice is necessary, even if such circumstances are *unlikely* to ever emerge, or even if they are unfeasible. That it is unlikely is not a good enough reason not to articulate it. However, the thesis also aims to make the normative ideals expressed within it display a degree of feasibility, and applicable to the world as we find it. Hence the contribution of concessive theory.

The chapter articulates, first, an idea of the ideal circumstances of distributive justice in relation to corporations, which draws on Rawls’s ideas about property-owning democracy (2001b). This is based on the requirement for a base level of equality within a Rawlsian society, and makes suggestions about the ownership of private property and productive property. This section also appeals to Cohen’s ideas about justice and rules (2002 and 2008) and argues that a Cohen-inspired

conception of justice in relation to corporations would require the existence of both just rules as well as a just ethos in which corporations make just choices within the rules.

The chapter then moves into the realm of concessive theory, and addresses what a just corporation would look like once we concede to the facts of corporations and global capitalism. The thesis contends that it is this concessive approach to justice that shows that the desired link between justice and corporations is possible, thus more attention is paid to concessive theory. The central idea of these proposals is that corporate activity ought to be subject to both a do no harm principle as well as an all affected interests principle (AAIP). These principles relate to substance and procedure. In relation to substance, the do no harm principle specifies a basic normative minimum which should be acceptable to all views on justice and corporations. The AAIP is to do with procedure, and appeals to legitimacy by arguing that people have a right to a say in decisions that affect their lives. The chapter outlines three reasons for the adoption of this principle. The chapter then discusses five conditions that corporate activity would have to meet to abide by these requirements. Some of these are institutional components, whereas some are certain types of activities.

The central idea is that there are a variety of ways in which corporations affect people's life chances, and the AAIP attempts to mitigate this. To this end, it seems necessary that this principle is abided by in a number of different ways and institutional settings, from ensuring that those affected have the knowledge and tools to understand the manner in which they are affected and to take action

as a result, right through to enabling redress of corporate wrongdoing. The chapter aims to avoid creating a stark dichotomy between an argument about state-based regulation, and one about international legal requirements. This is a reflection of the view of global distributive justice as neither a clear question of state-based conceptions, or one of cosmopolitan reform of global public institutions. As such, the proposals outlined here aim to cover the “beginning, middle and end” of the effect of corporate activity.

The five conditions are as follows. The first two relate to the availability and acquisition of knowledge and information: are pre-consultative learning and transparency and disclosure of information. The third condition is an institutional component, and is to do with the establishment of a global consultative forum, which enables affected parties to participate in and impact upon corporate decisions that affect them. There are a variety of key features that this forum would need to display in order that it could be deemed to be fair or just. Such features are discussed in detail below. The fourth condition is to do with the evaluation of corporate activity and corporate commitment to the AAIP. The idea here is that the decision of whether a corporation is acting responsibly needs to be made by institutions or people who are separate from that corporation. This would seem fundamental to upholding the legitimacy of the entire process. The fifth condition is another institutional component, and is to do with the provision of a redress mechanism for instances in which the AAIP and /or the do no harm principle has demonstrably not been abided by.

As such, there is a distinct contrast between the two main sections of the chapter. While the first section appeals to Rawlsian ideal theory and Estlund's idea of aspirational theory, the second section attempts to strike a balance between what is normatively desirable, given the previous arguments in the thesis about corporations and the requirements of justice, and what is feasible once certain facts about the world are conceded to. These facts broadly pertain to the existence of global corporations within a system of global capitalism, but more specifically attempt to address the multi-polar nature of global governance institutions, within which CSR policies often exist. Thus what is proposed here attempts to clarify the role of global corporations, as well as other actors, in determining the extent to which the ideal of a just corporation might be realised.

The basic principles cut across all conditions, and within each condition there is a role for actors such as NGOs, governments, international organisations, as well as corporations themselves. Increasingly, as CSR becomes legitimised at the level of global governance institutions, this approach is recognised as necessary to bridging the gap between calls for state-based regulation (which on the basis of the argument of the thesis would seem both an inadequate way to deal with the problem, as well as likely to be rejected, and/or avoided by corporations themselves), and the inherent restrictions placed on CSR by global capitalism. While this addresses the question of feasibility, it also sets up the discussion for the next chapter, in which the application of the ideas expressed here to the UN Global Compact is discussed.

6.2 Ideal - Aspirational Theory: Compliance with Rules and Just Choices

This section discusses the Rawlsian conception of a ‘property-owning democracy’, and posits that the ideas expressed therein offer the opportunity to set out both an ideal and aspirational theory of distributive justice for global corporations. However, the argument also draws on Cohen’s ideas about the importance of making just choices within the rules, *as well as* complying with rules. As such, the argument is made that (ideal) justice in relation to corporations requires circumstances akin to Rawls’s property-owning democracy, as well as that corporations are involved in the creation of a just ethos; it is this latter requirement that prompts the requirement of just choices.

6.2.1 Ideal-Aspirational Theory

Firstly, however, it is necessary to explicate more thoroughly the meaning and value of ideal theory, and subsequently aspirational theory. Ideal theory is a Rawlsian idea that is to do with the assumption of strict compliance with the requirements of justice (2001b: 13). The Rawlsian conception of this is that an ideal theory of justice sets out the principles of justice that guarantee background justice within a society over time. Thus the focus of a theory of justice is on the basic structure of society, which is made up of institutions that have a profound effect on people’s life chances. This fundamental idea of Rawlsian theory has been subject to much debate, as was discussed in chapters four and five. As is discussed below, the Rawls-Cohen debate elaborates two different ways of thinking through what *ideal* theory (denoting scenarios in which there is full compliance with a conception of justice) in relation to global corporations would demand.

As well as ideal theory, what is discussed in this section is also classified as aspirational theory, drawing from Estlund's characterisation (2008). He discusses both aspirational and concessive theory as a means of avoiding what he calls "utopophobia". Aspirational theory lies between the two extremes of complacent realism, and utopianism (Ibid: 259). To clarify these terms, complacent realism denotes resignation to how things are and as Estlund uses it, it is a derogatory term, in that it is a position that eschews all aspiration (Ibid: 268). Utopianism, on the other hand, describes ideas that are impossible for humans to ever meet (Ibid).

In relation to corporations, then, it could be said that a position of complacent realism would imply an uncritical acceptance of the manner in which corporations understand their social responsibilities, and the CSR process as currently practised. Utopianism in regard to corporations would presumably be a simple statement that corporations ought not to exist, without an articulation of how it might be possible for corporations to *aspire* towards justice. Thus, aspirational theory deals with what is possible to achieve, but unlikely. Concessive theory, on the other hand, is to do with conceding that at times, there are certain facts or human failings that necessitate thinking about what is the best that can be done while acknowledging this reality. The remainder of this section details two facets of ideal-aspirational justice theory in order to clarify first what just corporations would like in a scenario of full compliance with justice and second what aspirations towards justice and the corporation might look like.

A Rawlsian ideal argument would be that in a property-owning democracy, justice requires that corporations abide by the rules of the basic structure. Once those rules oversee basic just behaviour on the part of corporations, individual choices made by corporations are not relevant to questions of justice. As such, ideal theory requires compliance with “just” rules, and nothing else. As per the argument of the previous chapter, there is an important disagreement between Rawls’s and Cohen’s position on whether or not non-legally coercive institutions are part of the basic structure. Rawls’s argument would be that they are not, and as such, the just corporation merely has to abide by the rules. As such, it is necessary to explore the *rules* a Rawlsian property owning democracy would advocate for global corporations.

On the other hand, if we consider corporations to be *outside* of the basic structure (on a lax interpretation), this is not to say they are “exempt” from the requirements of justice. Rawls emphasizes that “no institution or association in which [members of a society] are involved can violate their rights as citizens” (2001b: 166). As such, any violation of basic rights on the part of corporations is seen to be unjust.

Cohen’s argument, however, provides more scope for discussion in relation to corporations. His position is that justice also requires that individuals’ private choices are just ones (2002). This mitigates against the development of an ethos of accumulation within a society which is inevitably bad for those who are least well-off. As argued in chapter five, this is a demanding view of justice, and in agreement with Williams (1998), the thesis posits that in order for principles of

justice to apply, the institutions that they apply to must meet a requirement of publicity. It was also argued that global corporations, in the manner in which CSR is practised, meet this publicity requirement. Thus this position states that ideal theory would demand that *even in* circumstances where there is full compliance with the principles of justice that apply to the basic structure, it is still necessary for justice to be part of choices and transactions that take place *outside* of that basic structure.

In relation to corporations then, both arguments would have different consequences. The pure Rawlsian position would be that as long as corporations comply with the rules of the basic structure, CSR is not really necessary; however, presumably the rules would permit different things than the current situation – this will be discussed further on. Cohen’s position, however, would be that CSR policies are necessary (in their guise as voluntary self-regulation – i.e. just choices), *in addition to* the existence of just rules that apply to global corporations. Given that CSR is effectively about generating an ethos of responsibility amongst corporations, but rarely about changing the rules or regulating corporations differently, the Cohen argument seems apt here. However it is important to be clear that Cohen’s argument would be that there are just rules, *as well as* a just ethos.

6.2.2 Corporations and a Property-Ownning Democracy: Just Rules

In the pure Rawlsian position of a property owning democracy, a central feature is that property rights are to allow a “sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the

adequate development and exercise of the moral powers” (2001b: 114). People’s moral powers are what Rawls calls their capacity for a sense of justice and for a conception of the good (2005: 19); people’s possession of these attributes renders them free and equal and thus they are fundamental to Rawls’s conception of justice. These interests - in developing a sense of justice and a capacity for a conception of the good - justify his requirement that every individual should enjoy access to a range of (primary) goods—various liberties, educational and employment opportunity, and wealth and income (and health care) to use their freedoms (Rawls, 1999: 78-81). Thus Rawls sees the basic right to property as important in realising justice. There are other notions of property rights, which Rawls does not see as “basic”, but rather as something to be decided at the legislative stage: the right to private property in natural resources, and means of production generally, and the right to property as including the equal right to participate in the control of the means of production and of natural resources, both of which should be socially, not privately owned (Ibid). Thus what Rawls means is that the question of private property in the means of production is to be judged “within a political conception of justice that can gain the support of an overlapping consensus” (Ibid: 114-115), and according to the historical and social contingencies of the time.

However, as well as this, a property owning democracy would also ensure the widespread ownership of productive assets and human capital, against a background of fair equality of opportunity. This means that the institutions of the basic structure must:

[...] from the outset, put in the hands of citizens generally, and not only of a few, sufficient productive means for them to be fully cooperating members of society on a footing of equality. Among those means is human as well as real capital, that is, knowledge and an understanding of institutions, educated abilities and trained skills. Only in this way can the basic structure realize pure background procedural justice from one generation to the next (Ibid: 140).

On this basis in relation to global corporations, a number of things would be different in a property-owning democracy.

First, as mentioned in the quote above about associations outside of the basic structure, any violation of basic rights of citizens by corporations is immediately seen as unjust in the Rawlsian conception. This might seem an obvious point, but given that CSR is often about corporations making commitments in terms of basic rights, it seems appropriate to mention that even on the thinnest reading of Rawls (i.e. that global corporations are not part of the basic structure), corporations are still often in violation of the requirements of justice. As such, the most fundamental requirement of corporations in the ideal circumstances of justice is that they do not violate basic rights. The specification of a basic normative minimum is taken up again in the next section on concessive theory.

Second, in relation to the stipulation of widespread ownership of productive assets, the sheer size of some global corporations, would be subject to question within a property-owning democracy. As mentioned in chapter two, global corporations utilise, and develop many commercial and operational techniques that establish them as large powerful entities. In this regard, mergers and acquisitions, high levels of FDI, as well as techniques such as transfer pricing and outsourcing seem relevant to this discussion. It is difficult to see how

corporations that own assets across a number of different territories could be justified against the requirement of widespread ownership of productive assets. Of course, the ideas discussed by Rawls are to do with national societies, but the existence of global corporations across territorial boundaries would seem to emphasise rather than negate this point. In circumstances where there is a global monopoly on certain products or services, the ideas of a property-owning democracy would suggest that overall this mitigates against the realization of background justice over time, in the sense that the ownership of the means of production is concentrated in the hands of the few, rather than spread across different groups or different societies. The ultimate conclusion of this point, then, is that justice requires that business be conducted on a smaller, less global scale that offers opportunities for the widespread ownership of the means of production.

Third, from the quote above it would seem that background institutions within a property owning democracy must work to enable citizens to participate fully in society, as equal members with equal chances. This is to do with guaranteeing background justice over time, and also would presumably place restrictions not just on ownership of resources and assets, but also on the generation of profit. Rawlsian justice, while allowing for some accumulation of wealth (as discussed in chapter four, in relation to incentive-generating inequalities), would require that such accumulation does not mitigate against background justice, for example in relation to “the fair value of the political liberties and to fair equality of opportunity” (Ibid: 161). Rawls proposes that a property-owning democracy employs a principle of progressive taxation to prevent this (Ibid). Thus, it could

be assumed here in relation to corporations that they would be taxed accordingly, such that as their profits went up, so would their rate of taxation.

The difficulty of this again is in the globalised element of it – different countries fiercely defend their right to set different taxation rates. Some countries have a progressive element to their corporate tax rate (for instance, the UK), while others operate a flat rate, regardless of profit (for instance, Ireland). However, it seems reasonable to suggest that taxation is an area in which corporations are able to pick and choose which rules best suit them, as evidenced by phenomena such as transfer-pricing and double-tax agreements. In relation to this, at the very minimum a Rawlsian picture of justice would require that corporations are at least compliant with tax law (and it is often argued that corporations are not), but also ideally that corporate taxation rates are set to ensure background justice, and to prevent great accumulations of wealth within a society. Given the point made above, that within a property-owning democracy global corporations of the scale that we are familiar with would possibly not exist, in relation to taxation, the Rawlsian scheme would call for national societies to set a progressive rate of taxation for business. However, if global corporations were to exist within a property-owning democracy, perhaps they would be subject to a global rate of progressive taxation, for if only one country practises this, then corporations can move to other jurisdictions.

A case could also be made that a property-owning democracy would require the reduction of the gap between CEO pay and pay of the lowest workers. As mentioned in the introduction, this gap has grown vastly in recent years.

Rawlsian justice requires that any inequalities within society are there to be of benefit to the least advantaged – this is the only justification there can be for inequalities in, say, income levels, or taxation. Thus in relation to high levels of pay for CEOs, the case would have to be made that such levels are indeed of the greatest benefit to the least advantaged. As it currently stands, it is not clear that this is what happens at the moment.

The quote above also mentions the value of human capital in relation to background justice. A national society within a property owning democracy would work to provide members of a society with the education training and skills required to participate on an equal footing in that society. Justice requires that people have a life that has equivalent possibility for being a fully cooperating member of that society. As such, it requires that people are not disenfranchised or disempowered by the circumstances into which they are born. A property-owning democracy would have to ensure that people are sufficiently educated and resourced to ensure their basic rights are respected in relation to their dealings with corporations. The ideas within the Rawlsian conception articulate a clear role for the state to play in enabling the full membership of society by all citizens. Again, what this would mean in the global sense is less clear.

This is a very general point that could have widespread implications in relation to global corporations– from the ability to join and participate in a trade union, to the ability to protect and utilize natural resources for a society’s advantage. As well as this, there is a parallel here between what is said below about pre-

consultative learning and this requirement of a property-owning democracy. The corporate role in this is that groups of people who are affected by a corporation are viewed by that corporation to have the right to contest, challenge and participate in corporate decision-making in questions that affect them. This means that many of the aspects of capitalism that have a profound effect on people's life chances must be negotiated with affected groups, rather than assumed as given.

6.2.2 Corporations and Just Choices: Cohen's Ethos

Moving beyond the Rawlsian construal of justice as compliance with rules, Cohen's argument is that justice requires more than compliance. It also requires making just choices within the rules. On this interpretation, it would seem that present practices of voluntary self-regulation of corporations would be required *in addition to* compliance with just rules. Thus the Cohen-inspired perspective on this would elaborate a much more stringent set of criteria for the realisation of the just corporation, most likely including questions of profit making and redistribution, as well as commitments on human rights, labour rights, environmental standards

On this basis then, the thesis argues that a Cohen-inspired conception of justice as applied to global corporations would involve *rules* that work against the maximization of profit and the concentration of the ownership of the means of production in the hands of the few, as well as justice being of consideration in circumstances where the corporation has the *choice* to behave justly or unjustly. In this respect, it is important to note that, inspired by the argument set out in

relation to a property-owning democracy, this would require at the very minimum just choices in relation to basic rights, but also just choices in relation to profit redistribution, executive remuneration, etc.

In summary, this section of the chapter has argued that there are two elements to ideal-aspirational theory with respect to corporations and justice. The first element draws from the Rawlsian idea of a property-owning democracy, which is to do with rules and corporate compliance with them. This stipulation would at a very minimum require that corporations do not violate basic rights; more stringently, it would put limitations on the size of corporations, in order to ensure the widespread ownership of the means of production. It would also require corporations to contribute to ensuring background justice within societies over time, which it was argued would imply the necessity of a (possibly global) progressive rate of taxation. On top of this argument, the case was then made for a Cohen-inspired perspective on justice in relation to corporations, which would require that in addition to compliance with rules, corporations also make just choices within those rules.

6.3 Conceding to the Facts: The Do No Harm and The All Affected Interests

Principles

Concessive theory will be important, since the time comes when some desirable goal turns out to be too difficult or too unlikely to be worth taking on as a practical goal. In that case we should concede to the unfortunate facts, some of them about human failings, some of them about other things, and chart a more feasible, if less inspiring course. (Estlund, 2008: 271).

This section concedes to the facts of global capitalism and corporations and asks by what principles should corporations be regulated once the realities of these facts are acknowledged. Before outlining the details and implications of this principle, it is first useful to explicate the value of concessive theory, and how it relates to the above-mentioned aspirational theory.

6.3.1 Why Concede?

In order to be clear about what is being conceded to, in what follows, the fact of the existence of corporations within a system of global capitalism shapes the recommendations here. This means that it is taken as given that corporations exist and will continue to exist. More specifically than this, the thesis has proceeded from the argument that global capitalism has involved an ongoing blurring of the lines of public and private authority, and that this is significant in relation to global corporations. As well as this, the thesis concedes to the facts that were highlighted in the historical story presented in chapter two – previous attempts at multilateral regulation have largely failed, and the question of the societal responsibilities of corporations has emerged as a question of self-regulation in co-operation with other actors.

By conceding to these facts, the thesis attempts to develop a proposal about justice and corporations that strikes a balance between desirability and feasibility. In doing so, the proposal addresses the process of CSR. CSR is not necessarily conceded to – it may be the case, on the basis of these facts, that

there are good reasons to propose CSR as a way of dealing with justice and corporations, even if it were not a fact of life. Indeed, Cohen's argument above seems to imply that some form of voluntary regulation of choices on the part of corporations is necessary.

It is in this section of the thesis that the ideas put forward in chapter three become important. Recall that chapter three used insights from Polanyi and Gramsci to help explain the emergence of CSR. It was argued therein that Polanyian thought is useful in understanding why the question of CSR emerged when it did, while Gramscian ideas related to the hegemonic bloc of capitalism offer an explanation as to why CSR takes *the form* it does. Thus this explanation views global capitalism as central to the emergence, form and shape of CSR. The above section, which discussed ideal-aspirational theory, are quite divorced from this interpretation of corporations and justice, in the sense that the recommendations made have little to do with the reality of global capitalism. However, concessive theory is about conceding to certain facts, in this case global capitalism, global corporations, and the historical emergence of CSR as a question of self-regulation. The Polanyian explanation of chapter three infers an inevitability about the existence of the question of what constitutes a socially responsible, or just, corporation – thus it is incumbent upon a concessive theory to also address such a question. Furthermore, the Gramscian explanation infers that such a question and the dominant responses to it are shaped by capitalism, and what has emerged as a result of this is the process of CSR – thus a concessive theory must address the process of CSR and how it is shaped in this way.

This is where balance is important. The insights developed in chapter three's explanation necessitates that attention is paid to the inescapable shaping of the question of the socially responsible corporation. However, the thesis is also about articulating what global distributive justice ought to demand of global corporations, and thus it is also important not to concede too much. As Estlund says:

There is more to goal setting than likelihood or ease of success. In political theorizing, concessions to the realistic but unfortunate facts are sometimes appropriate responses to a wider-ranging normative inquiry, where more desirable goals have been shown to be impossible or too difficult or too uncertain. Other times such concessions are merely symptoms of utopophobia. It would be irresponsible to set small and narrow goals without good reason to think that bigger and better things really cannot or will not be achieved (Ibid).

So, while something must be conceded in order to develop ideas that are not hopelessly unrealistic, it is also important to recognise that conceding too much is just as detrimental as not conceding anything. Drawing from what was articulated in the previous section about the ideal-aspirational demands that could be made of global corporations, it could be said here that CSR is, in Estlund's terms, an "unfortunate fact" - in ideal circumstances, we would not only have CSR, but we would also have fully just rules with which corporations would comply. However, critically interrogating CSR from the perspective of distributive justice balances out this attention to facts by making high normative demands of the process of CSR as it exists. As such, the ideas here attempt to chart a "more feasible, if less inspiring course" (Ibid).

Thus balance between normative desirability and empirical feasibility is key; in this regard, the discussion below does two things. In the first instance, a basic normative minimum in relation to corporate activity is discussed, the proposition that corporations should adhere to a do no harm principle. In the second instance, the all-affected interests principle and its related conditions put forward a high normative aspirational standard for corporations *within the process of CSR*. So, on the one hand, the thesis offers a substantive principle that aims to set a limit on any corporate activity that causes people harm. This is a deliberately generalised proposal that seeks to appeal to a broad array of political and moral convictions that exist about justice and corporations. On the other hand, the thesis discusses ideas that directly relate to the process of CSR, which advocate aspiration towards justice through its legitimisation as a result of the AAIP.

6.3.2 Setting a Basic Limit: The Do No Harm Principle

As is discussed in greater detail in the remainder of this chapter, the application of the AAIP focuses primarily on the procedure of CSR and what amendments could be made to it in order that it move towards justice in a concessive sense. The AAIP is predominantly concerned with bringing legitimacy to the procedure of CSR; in the sense that legitimacy is much less demanding than justice, the AAIP works towards striking a balance between feasibility and desirability. However, this raises the question of whether it is sufficient to follow a particular procedure in relation to corporations and CSR, and thus to contend that whatever outcome such a procedure constitutes legitimacy? Or does justice necessitate that we are also concerned with the outcomes that the specified just procedure produces?

The former scenario is a basic tenet of Rawlsian theory – in a fully just liberal democratic society, just institutions take care of background justice, and outcomes are not part of the consideration. In relation to corporations and CSR, this is problematic. While the ideas being proposed accept CSR as the way in which corporations address questions of their social responsibilities, and offer proposals for the amendment of the process, this should not be taken as an endorsement of the process *per se*. In this regard, it would seem important to specify a normative principle that aims to set a substantive limit on corporate activity, regardless of their participation in the process of CSR. This is because the thesis acknowledges the inherent limitations of CSR, and in some senses its precariousness and ambiguity. So again within concessive theory, balance is crucial. While conceding to facts, it also seems necessary to specify a basic normative principle by which corporate activity can be judged, if only to protect against the precariousness of the CSR process, *even when* practised under the terms specified below.

In this regard, the thesis makes the modest proposal that corporations should adhere to a “do no harm” principle. This principle by no means specifies the limits of justice in relation to corporations; this is a basic normative minimum, specified because that is what is missing from most accounts of CSR. Pogge uses the negative duty not to cause harm as a trigger for global justice obligations as an appeal to libertarian thought that would dispute the legitimacy of positive duties across territorial boundaries (2008: 136-143). Even under a negative duty not to cause harm, Pogge argues, a requirement for justice to apply to the global

sphere is still triggered. In this line of thought, the requirement that corporations do no harm would presumably be acceptable even to those who dispute that there are justice requirements between corporations and those affected by their activities. However, the orientation of the thesis is cosmopolitan, and the requirement not to cause harm is also a fundamental tenet of cosmopolitanism.

In many ways, it might seem spurious to contend that a principle to do no harm ought to be part of concessive theory in relation to corporations; it might be objected that it is a concession too far. It is of course such a basic requirement, that surely a discussion of *distributive justice* should require commitments over and above a specification not to do any harm. In this regard it is interesting to note Linklater's comments about Marxist thought in relation to the causation of harm and global capitalism. He states:

Increasingly, with the continuing global expansion of capitalism, the greater portion of human harm has been transmitted across frontiers by world market forces rather than exported from one society to another through conquest and war. To put this differently, in the past the major forms of transnational harm were concrete since they were part of a deliberate design to injure others; but in the future, Marx believed, harm would have a more abstract quality by virtue of being spread haphazardly across frontiers by the forces of global capitalism (Linklater, 2001: 271).

Thus on this basis it is within the process of global capitalism that much harm is caused, and the causation of harm is an obvious and minimal concern for justice. However, what is needed is a specification of baseline rights violations that constitute harm. One view of harm is that A is harmed by X if X makes A worse off than he was before X was performed. In relation to corporations, this would seem too strong, because virtually all corporate activity will make some less well off individuals worse off than they were prior to that activity.

Empirical evidence is useful here. The introduction detailed some recent instances of corporate irresponsibility that can easily be said to constitute the causation of harm of the most fundamental sort. Pogge's account (2002 and 2008) of global justice specifies a notion of harm as that which causes severe worldwide poverty; as a baseline for this notion he employs the idea of basic human rights. Pogge employs an institutional understanding of human rights, which does not specify what human rights there are, but instead specifies how we should conceive of human rights – or “what does the assertion of a human right assert?”. Pogge's reply to this is that a human right asserts that

[...] human agents are not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensating for their collaboration by protecting its victims or by working for its reform (2008: 76).

Thus harm on this understanding is conceived of as violation of a basic human right, defined as above. Most discourse about human rights and corporations proceeds from the UNDHR's specifications of human rights, which, as Pogge points out, introduces a large set of difficulties in relation to positive and negative duties. While a complete account of corporate harm and rights violations in this regard is outside of the scope of the thesis, this notion of harm seems feasible, given that it specifies harm as the product of ongoing, systemic/institutional coercion that impedes people's access to basic necessities. As a basic normative requirement, this principle aims to set basic limit on corporate behaviour, in order to produce minimally just outcomes. It also alludes to the broad conception of justice that the thesis works from, as discussed in the

introduction, which specified that justice is about the mitigation of suffering.

6.3.3 Legitimising CSR: The All Affected Interests Principle

The All-Affected Interests Principle (AAIP) focuses on the process of CSR and its application here seeks to legitimise the do no harm principle through allowing those who are affected by corporate activity to have a say in decisions that affect them. The link between two principles can be seen as the transition from a negative duty to do no harm, to positive duties to effectively legitimise the process of CSR.

The provenance of the AAIP is within democratic theory, with theorists such as Dahl (1970, 1989), Whelan (1983) and Goodin (2007) discussing it as a resolution of what they have deemed to be, respectively, the “problem of the unit”, the “boundary problem”, or most recently, the problem of “constituting the demos”. In a simple iteration, the AAIP states, “Everyone who is affected by the decisions of a government should have the right to participate in that government” (Whelan, 1983 cited in Goodin, 2007: 51). As such, in the case of the institutions of a domestic basic structure that display a profound effect on life chances, what justifies their operation is the right that people have to a say in how they are run. The thesis adopts a modified version of the principle, given that the subject matter here is not states, which states, “anyone who is affected by the decisions and activities of a global corporation that have a profound effect on their life chances should have the right to participate in those decisions and activities”. The five conditions outlined below extend and develop this principle by outlining a scheme that enables the democratic participation of those affected

by corporate activity in decisions that affect them.

This principle is thus to do with legitimacy, which on this understanding is defined as “the right to rule, understood to mean both that institutional agents are morally justified in making rules and attempting to secure compliance with them and that people subject to those rules have moral, content-independent reasons to follow them and/or to not interfere with others’ compliance with them” (Keohane & Buchanan, 2006: 411). The difference between justice and legitimacy is important. It could be argued that justice is about giving people what they are owed; legitimacy on the other hand asks which conditions must be satisfied in order that we can say individuals would have a valid, weighty reason to accept an institution and its effects. Of course, as Rawls points out, an institution can be legitimate without necessarily being just (2005: 428). The AAIP confers legitimacy on the activities of global corporations by allowing those who are affected by such activities to have a say in the definition of the rules. Keohane & Buchanan make that point that legitimacy must not be collapsed into justice, because justice articulates too high a standard for many global governance institutions; thus the argument that only just institutions have a right to rule is self-defeating (Ibid: 412). In the sense that the AAIP is viewed to be part of *concessive* theory, the thesis agrees with this idea. Rawls is clear that legitimacy cannot stand on its own without substantive justice (2005: 425). While this is certainly the case, in the sense of attempting a concessive idea of justice, the specification of conditions which could legitimise the process of CSR seems the best possible, or at least the least-worst, response once facts have been conceded to.

The appeal of the AAIP in this sense can be outlined in three main reasons, which are discussed briefly here. The first reason is to do with avoiding the arbitrary restriction of principles of justice to the state, or to global public institutions of governance and in so doing, missing out a variety of circumstances of injustice related to corporations – these circumstances are to do with the profound effects corporations have on people’s lives. As Goodin discusses it, the AAIP is about who counts in determining the constitution of the demos, a question that he refers to as the silence at the heart of democratic theory (2007: 43); it is also a key question for Fraser in her conception of global justice (2008: 22-29). Goodin argues that the AAIP is the only justifiable way to constitute the demos because it is the only way that people’s interests can be protected; the problem of overinclusiveness in this regard is secondary (Ibid: 49-50).

Arguments about constituting the demos are effectively arguments about protecting people’s interests. As such, appeals to common territory, history or nationality are more to do with the intertwining of people’s interests *because of* that shared territory, history or nationality, rather than the intrinsic normative significance of these commonalities; what is important here are people’s “common reciprocal interests”: (Ibid: 48). Fraser makes a similar point about the co-imbrication of people’s interests (2008: 24). In this way of thinking, a better, or fairer, rationale for constituting the demos in particular ways is the protection of people’s interests. In the same way that the existence of profound effects on people’s life chances is a morally sound and politically necessary reason to rethink where principles of distributive justice apply, it is the intertwining of

people's interests that justifies the all-affected principle. In circumstances where people have a common interest in a particular institution's effect on their life chances, it seems intuitive that all those people affected ought to have a say in the operation of that institution.

Following on from this, a second reason for using the all-affected interests principle is the scope within it for contestation of the received wisdom of CSR practices. As discussed in chapter three, the power dynamics of CSR processes, unavoidably shaped by global capitalism affect the outcomes of such processes. If CSR processes are developed by corporations, without parity of participation being given to all those affected by their activities, it is difficult to see how either the procedures or the outcomes could be deemed to be just. It is not enough for corporations to say that their procedures are developed with the interests of their stakeholders in mind. A substantively legitimate procedure would give equal say to all those affected and equal say would mean space for contestation, in the same way that is required for a democratic state to be called legitimate.

The third reason for the adoption of the all-affected interests principle is empirically focussed. Although the thesis is critical of stakeholder theory *per se*, it is valuable to point out that there is at least some affinity between the AAIP, and some of the thought behind stakeholder theory. Stakeholder theory influences many CSR processes and proposes to draw those who are affected by a corporation into a process of engagement. The thought behind doing this is a prudential one – that this sort of engagement will improve business. This is normatively problematic and it is this difficulty that the AAIP seeks to address.

While stakeholder engagement is premised on the business case for doing so, the AAIP requires that all those who are affected are included *because of* that effect, not because it is prudent to do so. This stipulation secures the engagement process so that participation is a right, and not something that can be taken away or not given in the first place because of commercial reasons.

In summary then, the thesis proposes two principles under concessive theory. The first principle, that corporations should do no harm, is a basic minimum normative standard that this argues is an intuitive requirement of corporate behaviour. The generality of this principle is deliberate so that it is difficult to refute its applicability to global corporations. Thus this principle sets a minimum standard for just outcomes in relation to corporate activity. The second principle, the AAIP, focuses on the procedural element of justice and corporations, the contention being that allowing those who are affected by corporate activity to have a say in decisions about such activity would bring some legitimacy to the CSR process in a concessive sense. The next section of the chapter outlines five conditions of the AAIP that it is argued would need to be implemented across the CSR process.

6.4 Concessive Theory in Practice: Five Conditions of the Just Corporation

This section details the implementation of both principles across the process of CSR. Given the focus on procedure, the AAIP demands most attention here. However the do no harm principle also serves a purpose as the normative standard that can be referred throughout the implementation of the AAIP. Some

details are necessary in this regard.

An obvious objection to the do no harm principle is that it does not specify to whom no harm must be done. Similarly with the AAIP, it could be argued that including all those affected by corporate activity does not necessarily render the process a more just one. Given that those affected by a corporation could be directors, managers, employees, as well as local communities, consumers etc, it is not then clear who is of concern in the process. The thesis replies to this objection that the process ought to be conducted in a non-hegemonic fashion, in which those who do not already have a voice built into the structures of corporate activity are privileged within the process of CSR. As such, in relation to the do no harm principle, and in answer to the question of to whom no harm must be done, the ideal substantive answer is that CSR processes should ensure that no harm is done to those who do not already have a degree of protection from within the structures of global capitalism. As such, of course, directors who have share options within a company are affected by its share price falling dramatically. However, it is the contention of the thesis that if we are concerned about justice in the concessive sense, what is of more concern is the protection of people whose rights are not already well protected. This stipulation is more complex than can be discussed thoroughly here, and in practice this would cause complex dilemmas. At best, however, we can see this principle as a broad guidance for the implementation of the AAIP across the CSR process.

The purpose of these conditions is to detail the political-institutional set-up through which the principles can be implemented and realised. This requires the

implementation of five conditions that would oversee the incorporation of these principles into all aspects of a corporation's activities, thus acknowledging the multiple actors and complex political circumstances within which CSR operates. Working on the basis that to reform just one aspect of corporate behaviour would be missing the point that global corporations are involved in multiple networks of activity, the argument is that each of the following conditions are interlinked, and the ideal scenario is that fulfilment of the criteria of one condition necessarily affects the fulfilment of another one. Thus the conditions are offered here in sequential order. A more modest suggestion is that an appropriate consultation requires fulfillment of the first, second and third conditions. Condition four, that of evaluation, should hold even if the first three conditions are not met; condition five, the opportunity for redress, is applicable to the AAIP, but also to the do no harm principle, i.e. people ought to have an opportunity to seek redress when basic harm has been committed against them by a corporation. The examples, where given, are to illustrate that some contemporary practices are similar to what is being proposed here; however, the existence of illustrative examples is not meant to be the limitation of what is being proposed.

6.4.1 Condition 1: Pre-Consultative Learning

The central idea here is that the existence of a system that aims to enable and ensure just corporate behaviour necessitates that those who are affected by that system understand it. This is about the democratization of knowledge so that those who are affected by corporate activity know and understand this effect, but also know how to empower themselves to take action, in a similar way that a functioning democracy needs citizens' willingness and capacity to contest

authority and power. The scheme proposed here aims to facilitate this participation and contestation requirement, but it seems necessary that in order for contestation and participation to be possible, people need to know and understand what they are participating in and indeed what they are contesting.

The Rawlsian stipulation of publicity is apt here. Recall that, “the publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible” (Rawls, 1999: 38-39). While CSR policies have traditionally been developed in order to avoid “rules”, in the regulatory sense, the argument here is that justice requires the existence of rules that are understandable and acceptable to all. However, in order to fulfill this requirement it would seem necessary that all those affected by corporate activities need to know and understand the ways in which they are affected and how they can respond.

Some corporations engage specifically in education programmes (for example, Monsanto’s Educational Outreach programme or Nike’s School Innovation Fund). However, programmes such as these are to do with corporate provision of education services as a charitable act, rather than the facilitation of mechanisms whereby knowledge of how corporations work, and how those affected by them can participate in their operation, is made available to relevant parties.

Pre-consultative learning would also need to be a process that is open to all types of debate and contestation. As is discussed in more detail below, current CSR practices do not allow much room for questioning the logic of the practice.

Fundamental questions to do with corporate practice, such as the right to capital mobility and the right to use natural resources, are not generally up for discussion. A fair pre-consultative learning process would allow, and indeed encourage these questions to be discussed and understood.

The question of how pre-consultative learning would happen is a difficult one. A primary difficulty is to do with who provides the learning. In the cases cited above, it is a private corporation that funds many public education schemes. In the interests of transparency and objectivity, this is not ideal. Pre-consultative learning ought ideally to be facilitated by an institution other than the corporation. One idea would be that knowledge of how the system works is provided by the state – in schools, to community groups etc. Another way of doing it is through multi-stakeholder fora - akin to groups such as the Forestry Stewardship Council, or Global Fund to Fight Aids, Tuberculosis and Malaria – that involve governments, private sector actors, civil society groups and affected communities, whereby part of the mandate of the organisation is to engage specifically in pre-consultative learning. A current similar example to how this might be done is the Building Global Democracy project, which has a strand entitled “Citizen Learning for Global Democracy”. This initiative draws on academic and practitioner knowledge to discuss how citizens can become more knowledgeable and thus empowered in relation to the globalizing conditions that affect their lives (BGD, no date).

6.4.2 Condition 2: Transparency and Disclosure of Information

The second condition is somewhat similar to condition one, in that it is also to do

with the availability of knowledge and the importance of knowledge in mitigating the negative effects of corporate activity. However, the second condition is a requirement that corporations disclose all information they have regarding their activities that is important for the people who are affected by their activities.

In order for affected parties to participate equally, and in a way that will actually have an effect on the corporate decision-making process, they need to have access to all the information that is relevant. It is important to note here that many corporations discuss transparency in terms of reporting, most particularly social and environmental reporting. Whilst acknowledging this, the thesis views the transparency requirement to have two key components. The first one is to do with direct provision of information prior to decisions about corporate activity taking place, rather than just providing reports on activities once they have occurred. The second one is to do with information being made freely available to those who request it. Transparency understood as *reporting* comes under the fourth condition discussed below, that of evaluation.

Transparency of information is recognized as a key component of wider accountability processes (see for example, One World Trust, 2008: 30) yet in relation to corporations, it is a sensitive subject. Indeed, One World Trust note that none of the corporations assessed in its 2008 report on accountability have a formal policy on information disclosure (Ibid: 32). Transparency is often alluded to; for instance, Gap and Coca Cola mention transparency a lot, but it remains unclear from their reports what their notion of transparency means (see Coca

Cola, 2008 and Gap Inc 2008: 28). One World Trust note that transparency commitments suffer from a lack of clearly defined policies by which information disclosure is guided; their suggestion is that at the very minimum corporations provide a list of information that will be proactively disclosed (2008: 33) as well as emphasising that global civil society groups have a key role to play in the process of transparency and disclosure. Two examples are cited in this regard - the Global Transparency Initiative and the Extractive Industries Transparency Initiative (Ibid). However, transparency of information does not feature frequently in many examples of CSR, and from the examples drawn on here it would seem that it is name-checked regularly, but it is unclear what is implied by this.

The transparency condition ought to serve to ensure the implementation of the AAIP across corporate activities. First, it would demand that corporations proactively disclose information that is important in enabling affected groups to participate in a decision-making process about corporate activity. The obligation to do this is underpinned by the assumed power disparity that exists between a corporation and its affected groups. Very often groups affected by corporate activities are under-resourced, with reduced capacity to gather and analyse information. In these instances, it ought to be incumbent upon the corporation to provide those affected with any information they have that might affect people.

There is a wide variety of possible information a corporation could have that would be relevant for affected parties. Environmental impact of corporate activity is a particularly suitable case. It would also be important that the

disclosure of information would not be constrained by the demands of capitalism; the withholding of information on the basis of “market-sensitivity” could not be justified in this regard. As such, the disclosure of information to affected parties in order that they can participate in the process of corporate decision-making is seen as being normatively prior to commercial sensitivity.

Second, the demand for transparency would also require that procedures are in place so that those affected by corporate activities can easily and successfully request information from a corporation. Most current demands for transparency focus on this aspect of it, as opposed to the above mentioned proactive disclosure. One World Trust provides good practice recommendations in this regard which state that corporations respond to requests for information within a reasonable timeframe, as well as providing a reasonable justification for refusing to give information (2008: 33).

Clearly the requirement for transparency of information is a demanding one. As a standalone aspect, ensuring transparency of information is recognised is difficult. However, the key point in regard to the five conditions is that they are interdependent. As such, in cases where there has been a failure either to proactively disclose information, or to respond to information requests (or to respond falsely) then those who are affected by that have a legitimate claim to redress, as discussed below.

6.4.3 Condition 3: Consultative Forum

The third condition is an institutional requirement of the AAIP. It proposes the

implementation of a global oversight body that facilitates a consultative forum through which those who are affected by corporate activity can have their say in corporate decision-making. There are three central characteristics of such a forum that are crucial to its operation as a fair, just and functional body.

Before elaborating these features it is necessary to address briefly what sorts of matters corporations ought to be required to consult about. Evidently, there will be many corporate decisions taken, the specifics of which are not relevant to those affected. As well as this, it is in some ways counter-productive to specify exactly what corporations should consult about, given that a key criticism of CSR is that in many instances its agenda is decided in advance of any consultation and that the power dynamics of the process place a tight control on what is and isn't discussed. However it is possible to assume that there are number of general areas about which global corporations should consult. One is the use of natural resources – it is surely of concern to local communities and governments whether and how local resources such as oil, gas, forestry and water are used. Relatedly, the environmental impact of corporate activity is also obviously of concern to local communities, to employees, to governments. Profit redistribution is another example. If a corporation is to manage its tax affairs so as little or no corporate profit is redistributed within the area in which it operates, this again is of concern to local communities, governments etc. Employment terms might also warrant consultation. One of the main incentives for granting global corporations the permission to set up in a particular country is the prospect of employment. However, the terms on which employment is offered is of concern for justice, in terms of pay, job security and working conditions. Issues

surrounding a corporation's commitment to long-term investment might also warrant discussion. This list is by no means exhaustive. Indeed the consultative forum should be seen as an ongoing and dynamic process of legitimisation of corporate activity.

On this basis, the first feature of the forum is that to facilitate a process of meaningful engagement, rather than functioning as “window-dressing” for an altogether different type of corporation. As such, it is imperative that deliberation and consultation take place before decisions are made, and decisions are taken on the basis of that deliberation, rather than those who are affected by such decisions being asked for their views as a means of adding legitimacy to a decision that has already been taken. This entails the existence of a global *obligation* for corporations to participate in, and work with, such a consultative forum.

The question of motivation in this regard is important. There is evidence that one of the primary motivations the corporations have in seeking out consultation with stakeholders is that there is a good business case for doing so (see for example Pleon, 2005: 18); a majority of respondents in this study cited the business case for CSR as their primary motivation. This is problematic in the sense that if engagement with stakeholders were to actually affect the decisions taken, then clearly there would be occasions when there would not be a business case for certain decisions – there would be situations when consulting those who are affected might result in a decision that necessitates that the needs of stakeholders are put before those of the corporation. Current practices of CSR are overly

dependent on the willingness of corporations to be “good citizens” or to make morally motivated decisions. By having a forum within which mandatory consultation takes place, whether or not an individual corporation is motivated or interested in participating in it is not important, given the obligation this scheme places on corporations to participate.

It is safe to assume that substantial input from those affected being reflected in corporate decision-making would lead to different decisions being taken. While many current CSR practices include stakeholder engagement processes, there is no reason why the engagement with stakeholders has to actually affect the decisions; there is no authority by which corporations must abide that requires them to demonstrate that they have used the views of those affected in determining their course of action. There is also no core normative standard of justice by which corporations must make their decisions. To change this would seem like a demanding ideal – and such a process would fundamentally change corporations – but there is some evidence that this type of idea is less utopian than expected. For instance, it was noted in BP’s 2008 sustainability report that BP’s reporting would benefit from demonstrating how stakeholder views have been taken into consideration (BP, 2008: 10)

At the very minimum, perhaps if it were transparent exactly how stakeholder views were taken into account, then different outcomes would be possible. However, a global oversight body which facilitated the engagement, and that had clear rules for all corporations in this regard, would take this requirement out of the hands of corporations themselves, and make the outcome of decision making

processes subject to fair input from those affected.

The second characteristic that warrants discussion is to do with the necessity for regional/local interpretation of global principles. Part of the difficulty in thinking through a global conception of distributive justice is the balance that must be struck between global normative requirements, and sensitivity to the plurality of cultures that such a conception affects. Thus the AAIP must pay due regard to this diversity. By articulating a principle that applies globally, but can be locally interpreted, the global intertwinement of peoples' interests can be reflected, but in a way that does not assume that people think in the same way about those interests. On this basis, a consultative forum that necessitated that all groups affected must accept the same terms globally would not be a just one. In the same way that an ideal Rawlsian liberal democratic society must negotiate many competing reasonable comprehensive doctrines, the global community of those affected by corporations cannot be seen as a collection of people, all of whom have the same interests. Thus the forum must be premised on the assumption that different groups will have different ideas, and there must be flexibility for this in its operation.

Recognition of the plurality of cultures involved in the CSR process could result in a radically different idea of what corporate responsibility is. The differences could range from whether child labour is perceived as acceptable or not, what sort of working hours are acceptable, whether or not unions are seen as legitimate, levels of corporate taxation and how profits are redistributed and used, right through to, at the most fundamental level, questioning how some of

the basic tenets of capitalism are viewed

The non-negotiability of the CSR process, as discussed by Blowfield is indicative in this regard. He argues that CSR takes as non-negotiable some of the basic values of capitalism without paying due regard to the idea that such values are by no means universal. An example of this is how a community's right to land affected by, say, a mining company can be subject to extensive negotiation, while a company's right to own and use such land is not questioned (2005: 520). Allowing the space for local interpretation of the AAIP could resolve this. While it may very well be the case that the outcome of a consultative forum would result in a corporation being authorized, for example, to use local resources, from the point of view of justice, it ought not be taken as *given* that corporations have the right to do this, without first local communities assenting to this. As such, cultural specificity of the AAIP would allow all these questions to be up for discussion and interpretation in a substantively different way to current stakeholder engagement processes.

There is a third issue that draws both these sets of considerations together, that of power. There are inherent power inequalities between corporations and the stakeholders they engage with. Power inequalities are manifested in the way that it is a lot more difficult for some stakeholders to make their voices heard within a stakeholder engagement process than it is for the corporation to do so. Power inequalities are also manifested in the unquestioning incorporation of capitalist values within the process of stakeholder engagement, regardless of their cultural suitability or application.

Part of this power is do with sheer size – corporations tend to have more resources, knowledge and capacity than smaller scale NGOs, local communities and possibly employees (although in the case of employees, trade unions can often provide the organizational wherewithal to alleviate this). But it also has to do with *how* the question of the responsible corporation has emerged, through CSR processes, as a question of technical adjustment and the use of certain methods to define what a good corporation is – such as the development of codes of conduct, monitoring, reporting etc (Ibid, 2005: 519). In terms of the stakeholder engagement process, power is also manifested in exactly *who* is defined as a stakeholder – as such, there may very well be groups affected by corporate activity who are not well-organised or well resourced enough, thus not recognized as legitimate and not invited into the stakeholder process (Newell, 2005: 542). As such, corporate power lies in the ability to define and dictate what corporate responsibility is.

The application of the AAIP ought to alleviate that inherent differential in power. This means that there needs to be an assumed base level of equality between those who participate in the forum. All ideas, perspectives and views ought to be equal to that of the corporation, with the do no harm principle protecting in particular the interests of those whose rights are not already well protected by capitalism. On this basis, it would seem that the forum for consultation would need an independent arbitrator to negotiate the consulting process. If the forum started off from the basis that there are profound effects on those affected by corporate activity that need to be mitigated from the point of view of *justice*

(rather than starting from the premise of the business case for CSR), this would work towards rectifying these power inequities.

Independent arbitration would only work in this instance if the question of justice that was central to proceedings, and this would require a huge change in the legal status of corporations. As discussed above, certain basic rights that corporations claim – the right to make a profit, the right to private property, free trade, and the freedom of capital – would be subject to contestation rather than assumed as being prior to the right of those affected to have their say. In terms of feasibility, it is clear that this is indeed some distance from what current practice dictates. However, it is also interesting to note that there are some legal mechanisms in place already (although they are much under utilized and indeed not very widely known) that can serve as a reminder that the powerful position that corporations are in is not a given fact, and that their existence is subject to legal permission. It was mentioned in chapter two that corporations originally were granted their licence to operate to fulfill some public purpose. This feature of corporations has been alluded to more recently, charter revocation laws being an example in this regard (Bakan 2005: 157). Such laws suggest that the right to dissolve a corporation for failure to fulfil its purpose (remembering that part of the original purpose of corporations was to fulfil some kind of public purpose) is possible within American state law, and there exist citizen activist campaigns to encourage groups to exploit this law (see for example CELDF, 1996).

6.4.4 Condition 4: Evaluation

The above three conditions aim to facilitate the best possible circumstances

within which corporate decisions can be taken, in a way that provides those affected by corporate activities a way to have a say in such decisions. The fifth and final condition described below is to do with what happens when this process fails. However, in between these circumstances, it is clear that those who are affected need to be able to make an assessment about the extent to which the process has worked. As well as this, even in circumstances where conditions one, two and three have not been met, there is still a need for assessment of corporate behaviour. Hence, the fourth condition is to do with evaluation.

The purpose of the condition of evaluation is for those who are affected by, and those who participate in, the process of corporate decision-making to be able to see whether or not it works. This condition determines *who* has an opportunity for redress. Evaluation processes, then, have the key objective that what is being evaluated is the extent to which corporate activity could be said to be just. This means that all three prior conditions, with the overarching AAIP cutting across them, as well as the do no harm principle underpinning them, would need to be the criteria on which the evaluation is performed.

Current CSR practices do contain some evaluative mechanisms. There are some specific institutions that have been set up to facilitate corporate reporting on environmental and social aspects of activity – for instance, the Global Reporting Initiative, AccountAbility, ISO 9000, and SA 8000 (see chapter 2) – all provide frameworks by which corporations can evaluate their own performance in relation to certain expected standards of social and environmental impact. These are predominantly multi-stakeholder fora, and have a variety of participants

involved in determining the framework. The reports that are produced are generally made publically available and as such the information contained within these reports should be known to all those who are affected by those reports.

There are, however, two central difficulties with this type of reporting. The first is to do with the fact that there is no obligation on corporations to engage in such evaluation, and the consequences of not reporting are generally not very serious. For example, reporting according to the GRI framework is a requirement of membership of the Global Compact, yet the most serious consequence of not providing a report is de-listing from the Compact. Beyond de-listing, there is no sanction for companies who do not report, other than the negative PR that results. This would seem to be far too weak to meet any requirement of justice. As well as this, even when corporations provide reports, it is not usually clear exactly *how* the information in these reports is used to reform corporate activities.

Another problem with current evaluation mechanisms is the lack of independence or objectivity therein. While many corporations aim to meet the standards set out in various frameworks that are developed in conjunction with a variety of stakeholders in many other instances the corporation itself is the entity that produces and writes the report. For instance, Gap's 2008 CSR report indicates quite clearly that the company's performance in relation to CSR is evaluated by themselves alone (Gap, 2008: 7). So while corporations can sign up to objectively developed standards of reporting, the way in which this information is presented and constructed is left to the corporation. Given the resources and tools corporations have at their disposal to present this

information, corporations are in a powerful position with regard to how they evaluate themselves.

These problems point to the need for an independent evaluation of corporate activity. This could be done in the same way that there is independent arbitration in the consultative forum. Evaluation would have to be on the basis of the extent to which the corporations met all five conditions of the AAIP, with reference to the do no harm principles, and the conclusion of the evaluation would have to present clearly whether or not there is a case for interested parties to seek redress from the corporation.

6.4.5 Condition 5: Opportunity for Redress

It is necessary to assume that there would be many instances in which corporate decision-making would not be acceptable to all those who are affected, and thus there is a need for the opportunity for redress. The most basic of such instances is of course in circumstances where the do no harm principle has been violated. This is seen as a violation regardless of fulfillment of the other conditions. The following four instances outlined here attempt to sketch out the more complex circumstances that would prompt a group to seek redress, as a violation of the AAIP. In real circumstances the cases won't be as clear as described here – however, it is useful to think through what might be on the agenda for redress, and also to think through the level of moral seriousness that might be ascribed to different instances. The first two instances as such are viewed as “first-order” problems, and call for the corporation to be held seriously to account; the second two are viewed as less serious, but still necessitating an opportunity for redress.

The difference between the two, however, is that the first two would (possibly) trigger compensation; the latter two (depending on investigation in the case of the fourth instance) would necessitate a learning exercise on the part of the corporation, but not necessarily compensation.

The first instance is when it can be demonstrated that a fair and just procedure within the consultative forum has not been followed. This could be as simple as a corporation obstructing, or not participating in or facilitating, a consultative forum. The problems relating to the inherently unequal power dynamics would also most likely be at play here. This could manifest itself in certain interested groups not being afforded the opportunity for participation in the forum, or their participation being hampered in some way, such as through a lack of capacity to organize, or lack of resources to fund research and garner the necessary knowledge to participate meaningfully in the forum. Given the obligation that the AAIP puts on corporations to give those affected an equal voice, as well as the obligation to protect those groups that are not already well protected by reference to the do no harm principle, the group affected would have a right to hold the corporation to account for that failure to comply with the process, as well as for whatever negative effects this failure has resulted in.

A second instance is in circumstances where a fair and just procedure has been followed but the decisions taken, or the commitments made, have not been followed through on. The existence of a consultative forum, and the obligation on corporations to participate is aimed at avoiding situations where there are grievances about corporate activities. However it must be assumed that despite

this, there will be instances where this process will fail. In this regard, affected groups would have a right to hold the corporation to account for the commitments it had made (viewed as binding in terms of the obligation to apply the AAIP) and had failed to follow through on. Again, it would also have a right to hold the corporation to account for the consequences of that failure.

A third possible instance in which the opportunity for redress might need to be exercised is in circumstances where corporate activity has had unforeseen consequences that have negatively affected certain groups of people, and that these negative effects are indisputable by the corporation. This third instance must be seen as morally less serious than the first two, because it would seem to be unjust to punish the corporation for outcomes that were unforeseen and impossible to avoid. However, in terms of the AAIP, it is important that corporate decision-making and the consultative forum within which this takes place is seen as an ongoing learning process, and in this third instance the right for an opportunity for redress would be exercised so that where possible the same errors are not made again. In this regard, the fourth condition of evaluation is important. If decisions are to be made about the consequences of decisions taken, the ability to access fair and impartial evaluative information about that is key.

A fourth possible and more problematic instance is in circumstances where all just procedures have been followed – all relevant groups have participated in the process on an equal footing and all commitments made by the corporation have been followed through on - yet some groups argue that they have been negatively affected. This could mean that some groups argue that a corporation is

responsible for a particular negative outcome, while the corporation denies it is responsible. The Rawlsian argument in this regard would presumably be that as long as the just procedure has been followed, the outcome does not matter. Yet with reference to the do no harm principle, it would seem important that perceived harm on the part of less well-protected groups is pursued and if necessary rectified. Similarly to the third instance above, until responsibility can be established for the negative effect, this would have to be seen as morally less serious and the opportunity for redress would have to result in a learning exercise rather than be used as a method of punishing the corporation. If a link can indeed be established, and it can be demonstrated that the corporation knew otherwise, by the evaluation carried out under the fourth condition, it would be necessary that the negative effect be treated in the same way as the first two instances of willful neglect.

It is also necessary to think through what the goal of the opportunity for redress condition is. The most obvious is that affected groups would want corporations to rectify their wrongdoings. In the case of the first two instances, where willful neglect of corporate obligations to observe the do no harm principle and the AAIP has occurred, there is a good argument that victims may be compensated. In terms of the practice of CSR, what is perhaps more relevant is thinking about how the opportunity for redress could be used as part of the development of *the idea* of the just corporation. CSR as learning network is an idea that is very prevalent within the literature. For instance, within the Global Compact, the specification that it is a learning network, rather than an institution with enforceable rules is a core part of its mandate. The justification for this is that

anything more stringent than that would act as a deterrent to corporate involvement. It is easy to criticise this as a derogation of responsibility on the part of CSR practitioners. However, within the realm of concessive theory, it is necessary to recognize that the question of CSR is an evolving one, and the idea that corporations can be held to account in a similar way to governments also requires time to evolve. The opportunity for redress should be seen then not only as a way of compensating victims, but also as a way of contributing to the development of the broader idea of the responsible corporation.

6.4.6 Criticisms and Objections to the Five Conditions

It is necessary here to briefly discuss some obvious criticisms that could be made about the ideas outlined here. With respect to concessive theory, there are two clear objections. The first is that the ideas are too concessive. The second is that they are not concessive enough.

With regard to the first claim, it could be argued that by engaging this far with CSR as it stands, normative demands are relegated as secondary to feasibility demands. As such, if the problem with global corporations is the practice of CSR as a response to allegations of systemic harm, why propose a solution that is located within that system? For instance, why not contend that the capacity of states, as well as that of multilateral organisations, to regulate should be beefed up so that corporations are subject to real, meaningful and stringent rules? The first and most obvious response to this is empirical. As was detailed in chapter two, attempts at multilateral regulation historically have failed, and the historical story of CSR tells against stringent regulation of corporations ever succeeding.

However, it could still be said this attitude is letting the corporations off the hook to an extent. In response to that, the thesis argues that it is not in fact clear that state-based and multilateral regulation is actually necessarily more desirable than what is being proposed here. In an ideal, Rawlsian state, of course it would be possible to regulate corporations according to principles of justice. The reality is somewhat different - there is little evidence to suggest that states or multilateral organisations alone are better placed to demand just behaviour from corporations. Thus the ideas outlined here emphasise that the inclusion of a multiplicity of actors who are affected by corporate activity is an appropriate concessive response to corporate responsibility in an empirical sense.

The second response is normative. Following on from the above, we can also refer back to Cohen's position about justice and rules; his argument is that justice requires more than rules, it also required just choices within rules. On this basis, it can be argued that CSR is a *necessary* part of a wider picture of justice in which a just ethos is as important as just rules. The conditions suggested here thus attempt to reform the process of CSR with this in mind. With specific reference to the AAIP and in response to the objection that the ideas are too concessive, as Goodin argues, the reason why territory or nationality or common history comes into a discussion about constituting the demos (or, deciding who has a right to a say), is to do with the intertwinement of people's interests. In the context of contemporary processes of globalisation, it can be argued that people's interests are intertwined in many ways, not just in relation to territory, nationality or history and that global corporations are one instance of this. If this is indeed the case, on the same basis that people have a say in domestic

governments because of the intertwinement of their interests, people ought also be able to have a say in how corporations affect their lives.

On the other hand, it could also be posed that the ideas suggested here are not concessive enough. This argument would run that the conditions of the do no harm and the all affected interest principles place unrealistic demands on corporations that are unlikely ever to be realised. The first response to this is again empirical. The ideas developed here appeal directly to the process of CSR as it is currently construed and many of the issues raised in the above discussion are well-known and acknowledged by participants in CSR processes, as indicated by many of the references given above. As such, the above ideas represent a critical engagement with CSR, that admittedly have demanding ideals of justice at their core, but that also concede to the way in which CSR has evolved and is practiced.

The normative response to the criticism that the ideas proposed are not concessive enough is the contention that it is not clear that a proposal regarding justice ought to be any more concessive. Justice is a demanding ideal, and the work of political philosophy is to specify ideals. The ideas proposed here raise the question of what the purpose of global business is; the existence and popularity of CSR indicates at the very least that there is acknowledgement that the purpose of business extends beyond the generation of profit. In the sense that the effects of corporate activity cannot be mitigated merely by reference to the principles of justice of a state, it is important to set out principles that span corporate activity and CSR processes, even if they are demanding far beyond what is currently

expected. The historical story of the corporation is indicative here; the original purpose of the corporation was to perform a public role. Thus constraining the demands of justice strictly to what currently seems possible is a constraint too far.

6.5 Conclusion

In summary then, this chapter has articulated two ways of thinking about global distributive justice in relation to global corporations. The important division in this regard is that between aspirational/ideal theory, on the one hand, and concessive theory on the other. Ideal theory is to do with a situation of full compliance with the requirements of justice. In relation to the organisation of capitalism, the consequences of full compliance with a Rawlsian theory of justice is a property-owning democracy in which the right to private property is only justified in the context of background institutions within a society that are fair and just. Within this scheme of property owning democracies, there are two possibilities in regard to corporations; either they would not exist, or they would be substantially different to what we know them to be now. The difference would be to do with the right to private property and the generation of profit, which could only be justified were it to be necessary for the purposes of securing a material basis for independence and self-respect.

The thesis also views these ideas as aspirational theory, in that they highlight that it is the fundamentals of capitalism that is at the core of the question of what a responsible corporation is. While CSR processes aim to generate discussion

about the responsible corporation, it is often the case that certain topics or areas for reform are off limit within that discussion. This is the value of aspirational theory – it highlights that the unlikelihood of something happening is not a morally good enough reason not to discuss it. As such, the ideas related to a property owning democracy as discussed here in order to set up the discussion of concessive theory.

The second section developed the concessive theory idea. Concessive theory recognizes that it is important to concede to certain facts if a slide into hopeless utopianism is to be avoided. This is important because theory that focuses only on the ideal, without reference or concession to certain facts, is easily disregarded. Given the focus of the thesis on a practical process like CSR, feasibility is a constant concern. However, as was mentioned above, it is important not to concede too much. While there is a practical focus of the thesis, the purpose of this practical focus is to ascribe duties of justice to corporations; as such, the normative dimension to this should not be completely superseded by questions of feasibility.

In this regard, the section on concessive theory concedes to the facts of global capitalism, and the existence of corporations, as well as to the manner in which CSR processes have been developed. Thus the thesis does not advocate straight forward state or international legal regulation; this is recognition of the fact that CSR has historically involved a wide variety of actors in the process, including states, international organizations, civil society actors, and corporations themselves. In this sense the thesis does not see the question of justice in relation

to corporations as a straightforward question of either state-based conceptions, or cosmopolitan conceptions of justice; the just corporation is a matter of discussion and contestation for these various actors. It is also important to note that it is an evolving question, and the ideas discussed here attempt to reflect that.

The core principles of this concessive theory are the do no harm and the all affected interests principles. These principles cover both substance and procedure with respect to the justice. The former principle specifies a basic normative minimum – that corporations should not actively harm anyone, but particularly those who are not already well protected within the structures of global capitalism. The second principle relates to procedure and specifies that anyone who is affected by the activities of a corporation have a right to say in the operation of that corporation. The do no harm principle interacts with the AAIP by specifying who, or what sorts of groups, are of primary concern within the five conditions of the AAIP. However, it is the AAIP that is of primary concern for this thesis.

Paying due regard to the demand for feasibility with regard to the normative standard being proposed here, the principles are implemented through the operation of five key conditions, that attempt to encapsulate the multiplicity of actors involved in the process of corporate responsibility, as well as the wide variety of institutional settings that are co-imbricated in the system within which global corporations operate. The five conditions discussed above have articulated the roles that other actors, such as governments and civil society organizations have to play in the question of corporate responsibility. These conditions were

pre-consultative learning, transparency and disclosure of information, a consultative forum, evaluation, and the opportunity for redress. Two of these, the consultative forum and the opportunity for redress, require the implementation of specific global political institutions tasked with the oversight of these processes. The others, pre-consultative learning, transparency of information, and evaluation, require the participation of actors other than the corporation, in the interests of objectivity and independence of the process. Justice in this regard requires the existence of these five conditions that are interdependent and symbiotic.

These five conditions outline the criteria on which CSR practices can be assessed. The thesis next addresses one specific CSR example, the UN Global Compact, and ascertains the extent to which the Compact meets these criteria, as well as making recommendations for change within the Compact on the basis of these criteria. This exercise can be seen as a further extension of concessive theory – another concession to certain facts. The question of feasibility is central to this, and as such the next chapter will endeavour to maintain a demanding normative ideal, while working within the institutional confines and remit of the Compact.

7: Aspiration vs Concession: a Proposal for the Reform of the UN Global Compact

7.1 Introduction

The purpose of this chapter is to elucidate the extent to which a prominent example of CSR, the UN Global Compact (hereinafter the Compact), meets the requirements of global distributive justice, as articulated in the previous chapter. This will address both the aspirational/ideal theory, as well as the do no harm and all affected interests principles, articulated through the five conditions of concessive theory. This chapter represents the final consolidation of the argument of the thesis. The thesis has established the gap that exists within political theory in relation to justice and global corporations, and has attempted to fill that gap by developing and extending the ideas about profound effects and the basic structure. Subsequently the thesis outlined a proposal for justice and corporations that addresses the ideal, as well as addressing what a concessive theory of justice in relation to the corporation denotes. This chapter is where a core aim of the thesis, to engage theory with practice, is realised.

The Compact is useful as an example of CSR because it represents the institutionalisation of the concept of CSR at the level of a global political institution. The principles of the Compact are not specific to any one company or country, and its foundation is the most recent indication of the belief on the part of the UN, as well as other global political actors, that global corporations have a large role to play in questions of development, human rights and justice. Given

the argument of the thesis that state-based theories of justice are not adequate to cope with processes of globalization, and that existing cosmopolitan theories of global justice neglect the important role played by private actors, such as global corporations, the Compact is illustrative of both the non-state, (global), non - public aspects of this argument.

It is important to be clear at this point about the purpose and constraints of this chapter. The Compact is assessed here in terms of the argument *already made* for global justice and corporations. As such, the chapter and thesis do not purport to provide an assessment of the Compact on its own terms (and importantly, the thesis is not “about” the Compact), but rather to evaluate it from the point of view of the high normative standards it has been argued ought to apply to global corporations, as argued for within the thesis. The purpose of this is twofold. First, it is useful to extend as far as possible the theoretical ideals of the thesis to assess their application to “real-world” instances of CSR. This is an indication of one of the main objectives of the thesis to draw together normative thinking about global justice with instances of global power that have profound effects on peoples life chances. The basis of this thought is, as stated in the thesis introduction, that the primary value of theoretical ideals is in how they apply to actual instances of injustice. Second, the ideas argued for within the thesis should be seen as part of a reform agenda for CSR practices, and within this chapter, for the Compact. Although high ideals are espoused within the thesis, as argued in the previous chapter, this is a valuable exercise, and the position of the thesis is that arguments about justice ought not be entirely constrained by current practices and beliefs about what is possible in relation to global corporations.

Thus this chapter on the Compact should be seen as representative of the balance the thesis aims to achieve between what is desirable and what is feasible.

There are three main sections in this chapter. The first section provides a brief description of the Compact, and sets out some of the main criticisms and appraisals of the Compact that exist within the literature. The purpose of this is to provide some context for the argument being made in the thesis in relation to existing views on the Compact. The second section draws on the ideas articulated in chapter six in relation to ideal and aspirational theory, and assesses the extent to which the Compact meets these standards. The distinction between Rawls's position on ideal theory and rule-compliance, on the one hand, and Cohen's position on ideal theory and private choices on the other is utilised here to ground the argument being made about the Compact – that justice requires that corporations must comply with rules, as well as make just choices. It is argued below that the Compact is predominantly to do with the latter part – just choices – but does not purport to change rules or demand compliance.

The third section moves to concessive theory and discusses the Compact in relation to the two principles and their five conditions that corporations would need to meet in order to be called just. The broad concern in this regard appeals to some of the issues raised towards the end of chapter six, relating to the extent to which reality should be conceded to and normative demands tempered as a result. The Compact is good example of this age-old political dilemma being played out. For its advocates, it is a pragmatic stepping-stone towards the realisation of justice at a later stage. On this view, it is important to engage

business in debates about responsibility and justice because such engagement is more fruitful than making unrealisable demands and therefore alienating corporations from the debate. For its critics, the Compact is a concession too far to corporations, which has allowed them to avoid regulation and gain the popular credibility that comes from association with the UN logo. While this dilemma is discussed and debated by policy makers and academic work concerned specifically with the Compact, it is also a central concern for philosophical questions of justice. The thesis does not purport to resolve this dilemma entirely, but the chapter sets out to highlight and discuss aspects of this debate, as it has played out in literature about the Compact, as well as how it impacts upon the recommendations of the thesis in regard to justice and global corporations.

7.2 The UN Global Compact: An Experimental Learning Network

The Compact was launched in July 2000, by UN secretary-general at that time, Kofi Annan, with the specific aim of giving global markets a human face (UN, 1999). The Compact draws from Ruggie's ideas regarding the globalisation of embedded liberalism (see chapter three for further discussion of this idea), and is about creating a partnership between business and the UN. This partnership will afford the activities and operations of global corporations a degree of social legitimacy, in the way that national economies provided the institutional mechanisms whereby social values were embedded in the wider economy. On a global level, it is argued that the challenge to do this is importantly different to that at the national level (see Ruggie 2003 and 2004), and the Compact has been devised specifically to address the unique set of circumstances that globalising

processes have brought about, by including global corporations and civil society actors as key partners in the process (Kell and Ruggie, 1999: 103).

The central idea of the Compact is that corporations voluntarily sign up to a series of 10 principles, related to human rights, labour rights, environmental standards, and corruption, which are drawn from the Universal Declaration on Human Rights, the ILO's Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the United Nations Convention Against Corruption (See Appendix 2). Thus the Compact gains legitimacy from the utilisation of existing UN documents and declaration.

However, the defining feature of the Compact that its supporters argue makes it an innovative and creative venture (cited in Ruggie, 2001), is its existence as a non-regulatory, voluntary network, that promotes learning, dialogue and the exchange of knowledge between relevant actors. By drawing on a variety of models of governance from international organisations - the "norm-setting" function of the UN, the collaborative partnerships of the ILO, the focus of the OECD on the importance of non-coercive principles of corporate responsibility, as well as the focus of the WTO on consensus (Therien & Pouliot, 2006: pp. 60-62) – it has been argued that the Compact is an instance of "complex multilateralism" (Ibid), as well as an "interesting piece of constitutional design" (Hurd, 2003: 17-18), or "an interorganizational network embedded within a shared framework of values" (Kell & Levin, 2003: 154-155). Perhaps ultimately the Compact has been described as the "network of networks" (UN Global Compact, no date). Thus, the perceived value of the Compact is in its unique

governance structure, and its approach to CSR as a non-coercive *encouragement* of best practice, as well as the dissemination of the ideas developed within the Compact about CSR. As such, it could be said that the Compact is about creating an ethos of corporate responsibility at the level of a global public institution of governance. This idea, and its relationship to theoretical ideals of distributive justice has a similarity to Cohen's ideas about the importance of a just ethos, as well as just rules, within a society; this is discussed further below in the next section.

7.2.1 Governance and Operation

The Compact's governance structure was reviewed in 2005, and to date comprises of a variety of different aspects, that exist locally, nationally and globally, and that include multi-sector actors.⁷ Again the focus in the Compact's self-description is that the governance structure "is light, non-bureaucratic and designed to foster greater involvement in, and ownership of, the initiative by participants and other stakeholders themselves" ("Global Compact Governance", UNGC website). In summary there are 7 entities that make up the governance structure of the Compact. These are: the Global Compact Leaders Summit, Local Networks, Annual Local Networks Forum, Global Compact Board, Global Compact Office, Inter-Agency Team, and Global Compact Donor Group.

In terms of how companies that sign up participate in the Compact, the primary way of doing so is through the Communications on Progress (COP) mechanism (for the most recent updates on the COP, see UNGC, 2009). This is a

⁷ Unless otherwise stated, the following information about the Compact comes from its website: www.unglobalcompact.org

requirement of membership and involves the company submitting a report to the Compact and sharing it with other stakeholders, detailing how the company has incorporated the Compact's values into its business. There are 3 key features within this: there must be a statement of support from the CEO; a description of practical actions; and a measurement of outcomes. Companies must submit a COP within one year of joining the Compact, and subsequently on an annual basis thereafter. Companies that fail to meet the COP deadline will be marked as "non-communicating" on the Compact website. Those who fail to submit a COP after being "non-communicating" for a year will be delisted from the Compact. Such companies will also not be allowed to use the Compact's logo, or to publically associate themselves with the Compact. All companies are expected to address policies and practices that relate to at least two of the Compact's issue areas in the first five years; subsequently, in the next five years, companies are expected to address all issue areas. The Compact provides members with tools and guidance as to how the COPs are to be produced, in the form of books and information on the website. There are also COP workshops, most of the papers of which are published on the website. In terms of highlighting best practice, the website also lists what are called "notable" COPs, in which outstanding COPs are recognized and shared. Companies are also asked to make a financial contribution to the Compact, ranging from \$500, up to \$10,000, depending on company revenue (UNGC, 2008b). As well as this, companies are encouraged to participate in the Compact's local networks, which are organized within different geographical areas, thus facilitating dialogue and exchange of knowledge on a local basis.

As of October 2009, the Compact had 5133 business members; this figure includes large companies as well as small to medium enterprises (SMEs). Of these, 168 were FT 500 listed companies. 4199 of these companies were listed as “active”, and 934 were listed as “non-communicating”. In addition to business participants, business associations (global and local), academics, civil society actors, cities, foundations, labour organizations (global and local), and public sector organizations can all participate. As of October 2009, these “other” participants totalled 1834. The purpose of the inclusion of multi-sector actors within the Compact is to do with its focus on dialogue, learning and exchange of knowledge, the idea being that multi-sectoral inclusion ensures that all those deemed relevant to the debate about corporations are included.

7.2.2 The Compact’s Advocates

As would be expected, the Compact has generated a vast amount of attention, including both widespread praise and as well as criticism. A brief summary of these assessments will be provided here, but the main focus for assessment and critique is, as mentioned above, the standards outlined in the previous chapter.

The central argument of those in favour of the Compact, as pointed out by Therien and Pouliot (2006) is the direct link that is made between the participation of business and the alleviation of poverty and the achievement of development goals (Ibid: 63). In Annan’s speech that launched the Compact, this link was made explicit:

We have to choose between a global market driven only by calculations of short-term profit, and one which has a human face. Between a world which condemns a quarter of the human race to starvation and squalor, and one

which offers everyone at least a chance of prosperity, in a healthy environment. Between a selfish free-for-all in which we ignore the fate of the losers, and a future in which the strong and successful accept their responsibilities, showing global vision and leadership. (UN, 1999).

Kell and Ruggie provide an intellectual underpinning for this appeal to business as key actors in the development process. As mentioned above, this is to do with the re-embedding of global markets with social norms, in which it is argued that some form of protective mechanism needs to be built into market structures (see for example, Kell & Ruggie 1999; Ruggie, 2003 and 2004). By engaging global business in these sorts of questions, it is argued that the Compact brings key actors into the discussion, and develops partnerships and relationships, rather than top-down regulation. Although Kell and Ruggie are cautious in their assessment of the Compact, saying it can only make a modest contribution (1999: 116), they are clear that another part of its value, they feel, is in the *advantages* it gives to business (Ibid).

The Compact itself also makes this point, its brochure listing 6 different benefits to business to participate (2008a). Interestingly, none of these benefits are to do with the “business-case” for Compact membership, and are more to do with the Compact being able to provide clarity, ease and advice to CSR practices, the assumption seemingly being that corporations are engaging with CSR anyway. Thus the Compact is pitched as responding to a need of the business community. The “business-case” is, however, alluded to by certain business figures that advocate membership of the Compact for companies (see for example Leisinger, 2007). Thus an important “selling-point” for advocates of the Compact is that

membership is advantageous to business participants, in terms of profit generation, but also in terms of enabling the process of CSR as it is already practiced by many corporations. This idea of the Compact being about providing legitimacy for already established practices, instead of working to change such practices, is taken up in the second section.

Another focus for praise of the Compact is in the governance structure and institutional form it takes. As mentioned above, it is avowedly non-regulatory, and adopts the form of a learning network, rather than attempting to impose rules on corporations from the top down – indeed the dichotomy between voluntarism and regulation is one that is rejected as irrelevant by Kell (who is Executive Head of the Compact) (see Kell, 2005: 72). He explains that the purpose of the Compact was never to be about regulation, but instead its purpose was to experiment with cooperation based on the use of *market mechanisms*, in a way that should be seen as complementary to regulatory approaches (Ibid; my emphasis).

Ruggie's argument for this form of institutional structure is based on pragmatic assessments of the likelihood of any alternative arrangements being accepted, either by the UN General Assembly, or by business leaders. In the case of the latter the fear is that attempts to codify and regulate would push progressive business leaders into an "anti-code coalition" (Ruggie, 2002: 32). He also argues that a stronger intellectual case can be made for the learning forum structure on the basis that no consensus exists as to what the responsibilities of global business to society are. As such, the Compact is an experiment in generating

discussion about this (Ibid). The learning forum innovation of the Compact provides the idea of corporate responsibility with the degree of flexibility that is required, it is argued, to avoid the “command and control” of regulatory approaches (cited in Therien & Pouliot, 2006: note 43).

7.2.3 The Compact's Critics

Many criticisms have emerged about the Compact that argue the opposite of the above positions. One argument is that a close link with the private sector is not necessarily a solution to questions of development and third world poverty. This link relies on the assumption that neoliberal economic policies work to benefit the poor, and is a position that is much contested within the field of development studies. Following on from this is the argument that the Compact is an endorsement of a cosy relationship between the UN and business, in which the values of capitalism will eventually drown out the values of the UN (see for example Corporate Europe Observatory, 2000). Some groups argue that this alliance between the UN and business should not exist in any guise (see for example CorpWatch, 2000 and 2004)

These arguments are often articulated by highlighting and targeting the membership of particular companies of the Compact, rather than attacking explicitly the more general argument that private sector participation is key to development and poverty alleviation. The fear, on the part of many civil society organizations, is that of corporate “blue-wash”, or of corporations using the advantages that are to be gained by being associated with the UN logo, with relatively little substantial commitment in regard to corporate responsibility. In

this respect, the involvement of some corporations that have established negative reputations has been highlighted in various letters and press releases directed at the Compact. Some of the corporations (among many others) that are mentioned by Corpwatch are Bayer, Nestle, Rio Tinto, Aventis, Norsk Hydro – all as “Global Compact violators”.

While Ruggie and Kell have argued that in general it has been “single-issue” or smaller non-transnational civil society organizations that have criticized the Compact (1999: 116), later on in the life of the Compact it was argued by Bendell that other larger NGOs, who had by that time endorsed the Compact and become stakeholders (Amnesty International, Oxfam, and Human Rights Watch for example) have all raised concerns about the membership of particular corporations (2004: 5). In a public letter to Louise Frechette, the Deputy Secretary-General of the UN, NGO concerns regarding the accountability features of the Compact were highlighted (see Amnesty International, 2003a). In a manner indicative of the wider institutional character of the Compact, the letter was published on the Compact website, as was Frechette’s response (UNGC, 2003). Utting has also highlighted that these high-profile NGO’s protests are particularly concerning, given their prominence and the general respect that their work receives (Utting, 2002b: 645).

A recurrent issue for critics of the Compact is the extent to which its principles and commitments are binding and enforceable. Even supporters, such as the NGO-coalition mentioned above, have raised concerns that over time the Compact’s principles have been less enforceable and accountable (Ibid). This

relates to a more general, wider debate that has emerged in the context of moves towards less formal regulation and more self-regulation of corporations, as discussed in chapter three. While advocates of the Compact and its unique structure claim that any discussion of regulation vs non-regulation in relation to the Compact is irrelevant (for instance see quote from Kell above) as the Compact is intended to be *complementary* to regulation, widespread concern exists that the endorsement of self-regulation at the level of the UN is a derogation of responsibility in this regard, and that the debate has turned away from regulation to assuage the concerns of business.

The wider point in this regard is noted by Utting:

[...] the Compact has come to symbolize the virtues of "voluntarism", both in the sociological sense that individual actions and values trump structural change and empowerment as the key to development and social justice, and, in the more literal sense, that voluntary initiatives and corporate self-regulation trump stronger forms of regulation involving governmental or multilateral organizations (Utting, 2003: no page number).

Thus the Compact becomes the definition of what constitutes UN-endorsed CSR practice, and leaves less room for discussion of other ways of doing things, such as the possibilities for new forms of regulation, or the opening up of the CSR agenda. The upshot of this, as has been argued by Blowfield (2005), is that CSR, the Compact included, emphasises and includes certain values - those that Blowfield calls negotiable - and exclude others, the non-negotiable ones (Ibid: 520). The latter values are to do with capitalism: property rights, profit-making, freedom of capital, commodification and the superiority of market mechanisms.

This point will be taken up later in the chapter in a discussion of ideal and aspirational theory in relation to the Compact.

It should be noted here that the Compact and its advocates are not in denial about this; as mentioned above, it was never meant to be a regulatory device. Annan, Ruggie and Kell have all emphasized the complementary nature of the Compact. Annan states: “where effective laws and regulatory systems are lacking, and where public institutions are weak or corrupt, the Compact can be only a pragmatic interim solution” (UN, 2004: no page number). However, despite these recognitions, it is hard to see where such regulatory initiatives would have enough support to get off the ground. In this sense, the Compact is both a symbolic as well as an institutional endorsement of this sort of approach. The general point is that the endorsement of self-regulation at the level of the UN gives it a certain strength and power – in effect it means that self-regulation becomes the norm, which in turn contributes to a further consolidation of corporate power.

Thus there are two strands of consensus regarding the Compact. One says that the Compact is an innovative partial and complementary solution to the difficult and challenging problem of corporate responsibility in the context of globalization, while the other says that the existence of the Compact is overall a weak answer to the same problem, and in many ways is detrimental to the long-term resolution of the question of corporate responsibility. The next two sections of the thesis will draw on some of these arguments in the assessment of the Compact in terms of the principles and conditions of global distributive justice as

articulated in the chapter six. The broad overarching argument that brings the strands of the assessment together is that the Compact endorses and fails to challenge received wisdom about corporate responsibility in particular, but more generally takes as given many fundamental ideas about global capitalism that are intrinsic to questions of global distributive justice. It is in this failure to change basic ideas about corporate responsibility that the Compact is primarily lacking. However, as the discussion on concessive theory indicates there is scope for some relatively easy change in certain aspects of the Compact. Ultimately, the thesis accepts that the role of the Compact is one of a stepping-stone, but argues that this role is undermined by the lack of discussion or conception as to what exactly the Compact (and more broadly, CSR) is a stepping-stone towards.

7.3 Ideal-Aspirational Theory: The Global Compact, Just Rules and Just Choices

The ideal and aspirational circumstances outlined in the thesis are to do with the restriction on the size of corporations and the generation of profit – thus, they are to do with redressing some of the inequalities brought about by current structures of global capitalism. The Compact in no way sets out to do this, and as such criticism of it on this basis might seem unfair. However, given that the thesis set out to articulate both aspirational and concessional conceptions of justice, and to apply these ideas to the Compact, this section of the chapter will develop a critique of the Compact on the basis of the ideas of aspirational theory, discussed in chapter six, as well as make some recommendations with regard to the Compact, corporations and justice.

7.3.1 The Compact and Just Rules

The Compact, as a mechanism of CSR at the level of a global governance institution like the UN, is in many ways the ultimate endorsement of CSR as the received way that the responsibilities of global corporations are defined. As mentioned above, this constitutes recognition of the belief on the part of the UN that corporations are intrinsic to questions of development and poverty. However, it is also an endorsement of the corporate way of responding to these questions, i.e. voluntary, unbinding, self-regulation. Chapter two detailed other historical attempts at developing global regulation of corporations, but the political-economic circumstances of recent years have determined that these sorts of questions have been restricted to the voluntary adoption of codes of conduct and responsibility.

On the basis that the Compact does not challenge received wisdom about CSR (i.e. that voluntary initiatives are the best way to go about corporate responsibility), it does not fit with the ideas of the aspirational theory. The Compact is not about the scaling down of the size of corporations, nor about the redistribution of profit and progressive taxation, the reduction of executive remuneration, or about ensuring widespread ownership of the means of production within societies. The Compact as such is an instance of global capitalism as currently known being endorsed by the UN as the defining way in which corporate responsibility is ensured. More generally than this, the Rawlsian ideas to do with compliance with rules are most definitely off the Compact's agenda. As discussed above, the question of voluntariness versus regulatory approaches have been dismissed as missing the point involved in the Compact. In

the Rawlsian sense that justice is about creating rules within a basic structure, the Compact is not about creating and abiding by just rules, in the regulatory sense – it is instead about encouraging just choices.

A valid response to criticism of this nature is of course that the Compact does not meet these requirements because it does not set out to fulfil such an agenda. As such, the Compact is not about securing ideal justice – as per Ruggie’s and Annan’s arguments, the Compact is a pragmatic response to circumstances that prevail currently. It is not, however, perfect, nor is it the only response. Ruggie mentions that there may be instances in which corporations sign up to the Compact for strategic reasons, and that the learning model of the Compact cannot deal with “determined laggards”, who he argues may require different approaches, such as legislation or social action (Ruggie, 2002: 33). He also points out that the Compact is not a replacement for effective action by governments (Ibid: 34).

Ruggie also makes the point that a regulatory-based response to corporations and globalisation is impossible, from the point of view that a definitive code of conduct for corporations would never get through the General Assembly, but practically speaking would also be impossible for the UN to monitor (Ibid). So on this basis the Compact is presented as a partial solution that is feasible and as well as desirable. The trade-off is of course the inevitability that there will be “determined laggards” and those who sign up for strategic reasons. In this sense, its advocates construe the Compact as a *concessive* solution to the dilemma of the wider responsibilities of global corporations to society.

In terms of aspirational theory, then, it is valid to contend that a direct comparison with the Compact is unfair, because it is not a comparison of like with like. The thesis concurs with this, and in a similar manner to the previous chapter, the larger focus of the chapter is on concessive theory. However, it seems there is another point that could be made in this regard. What is missing from advocates of the Compact is an articulation of something akin to aspirational theory. For instance, given that the Compact is widely accepted as a partial, non-ideal response, then what is the ideal response? No such attempt has been made by the Compact's advocates to do this, but perhaps an indication is given in Ruggie's report to the UN Commission on Human Rights, in which he was unexpectedly critical of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (see Mantilla, 2008 for an analysis of Ruggie's contribution).

Broadly, Ruggie criticised the attempts to codify the legal responsibilities of global corporations vis-à-vis human rights, because they placed demands on corporations that were not placed on states. He also argued that it is the state that ultimately has responsibility for overseeing compliance with human rights. Thus it could possibly be assumed that "bringing the state back in" is the aspirational-ideal advocated by some supporters of the Compact. Ruggie terms this approach as "principled pragmatism" (cited in Mantilla, 2008). However the second point in response to this is that "bringing the state back in" may not be practical or desirable. As has been argued in this thesis, the extent to which states are able to guarantee human rights (or a wider conception of distributive justice) in the

context of globalisation is problematised by the mobility of corporations vs. the immobility of governments. Furthermore, states are often not the neutral arbiter of rights that they might be thought to be, especially in relation to corporations. While Ruggie's argument is of course legitimate, without further articulation of the aspirational-ideal in relation to corporations from the Compact's advocates, it is difficult to conjecture further.

7.3.2 The Compact and Just Choices

There is, however, one other respect in which the Compact warrants discussion in relation to aspirational-ideal theory. This is in the manner in which the Compact comes some way towards Cohen's ideas about just choices within the rules. The Compact sets out to encourage members to make corporate decisions on the basis of its ten principles, and to share knowledge in regard to the processes involved. As such, the Compact is part of the CSR ethos that exists amongst many large global corporations. In its role as part of the UN system, it is intrinsic in the endorsement of that ethos at the level of global governance.

However, it is difficult to see how an initiative such as the Compact would constitute justice as per Cohen's position. Recall that in chapter six it was argued that on Cohen's ideas, justice is about compliance with just rules, as well as making just choices. As well as this, Cohen's position is that justice requires that choices that are made are not market maximising. The Compact is not about the encouragement of such choices; it is however, about encouraging the recognition on the part of corporations that their behaviour has a wider impact beyond the immediate commercial sphere. In its mode of operation, the Compact partially

fulfils the publicity requirement discussed in previous chapters. While questions have been raised about the efficiency of the way in which the Compact diffuses its ethos (see for example Kuper, 2004: 12), in the manner in which the Compact institutionalises the idea that corporations have responsibilities beyond their commercial ones in a public way, it could be said that it is in some way responsible for the generation of an ethos that aspires towards justice.

7.4 Concessive Theory: The Compact and the Five Conditions of Justice

In chapter six it was argued that it is necessary in discussions of global distributive justice to differentiate between what is desirable and what is feasible. In relation to what is feasible, it was argued that once certain facts are conceded to (in this instance, capitalism and the existence of global corporations), two suitable principles of justice to apply to global corporations are the do no harm and the all-affected interests principles. These principles address the matter of substance and procedure in relation to justice, the former specifying a basic minimum normative standard that aims to set a limit on corporate activity; the latter espouses the idea that justice necessitates the right of anyone who is affected by a decision to have a say in that decision. Specifically to this thesis, and to corporations, the AAIP was restated thus: “anyone who is affected by the decisions and activities of a global corporation that has a profound effect on their life chances should have the right to participate in those decisions and activities”.

It is important to be clear that the AAIP is utilized, in this instance, to protect and support those who are affected by a corporation’s activities, while the do no

harm principle aims to ensure such protection and support for those not already protected by the structure and operation of global corporations and global capitalism. Given the concessions this argument makes to the realities of capitalism and corporations, this would seem a necessary bias or adjustment. It is important to be clear that the principles put forward here are meant to operate to the advantage of those who do not already have a say built into structures of capitalism. As was mentioned above, CSR in general does not address what have been called non-negotiable values; in this regard, shareholders, directors, executives, as well as in some instances, employees, are generally well protected, and have secure rights in relation to a corporation. As well as this the latter groups of people also usually *opt in* to their relationship with the corporation; the argument of the thesis is directed at those who experience the profound effects of the corporation but who do not or did not necessarily have a choice in that regard.

This section of the chapter assesses the Compact in relation to the 5 conditions of the do no harm principle and the AAIP that were outlined in the previous chapter. It draws on secondary sources that have been published about the Compact, as well as evidence from the Compact itself, and seeks to set out instances where there are examples of the substance of the condition being met, possibilities where the conditions could be met, and instances where the Compact works to render the conditions impossible to meet. It also highlights ways in which the Compact could be reformed to meet the conditions.

7.4.1 Condition 1: Pre-Consultative Learning

Recall that the pre-consultative learning condition is to do with the democratization of knowledge, and the importance within that process of equipping people with the skills, capacity and tools to use knowledge. The purpose of this condition is that in order for those who are affected by the activities of a corporation to make use of the full stipulation of the five conditions (i.e. to participate in the consultative forum, to access evaluation of corporate behaviour, and to seek redress where necessary), they need to be able to know how to do so. Without knowing and understanding the system within which their lives are being affected, people are easily disenfranchised and disempowered. Pre-consultative learning is an attempt to rectify this by opening up the manner in which corporations operate (in particular but not exclusively CSR processes) to those who are affected so that they are easily understood.

In relation to the Compact, its governance structure and institutional form offer some possibilities in relation to pre-consultative learning. In the first instance, the public provision of information on the Compact's website can be seen as part of a process of learning, or at least making information available to those who wish to access it. It is possible to access a corporation's COP quite easily on the site, and to access a lot of literature, both critical and otherwise, that has been written about the Compact. There is an important difference in this regard between corporations whose CSR programmes are not part of the Compact and those that are. Although for the most part the reports that can be accessed on a company's website are the same as they would post on the Compact's website, within the Compact it is possible to access criticism of the Compact, and of specific companies. This is a small but vital feature. In the sense that pre-consultative

learning ought to be about enabling people to understand, but also to contest and challenge CSR, the ability to access both negative and positive points of view about the process is integral. In this instance it could be said that this is the value of having a global public institution such as the UN as the overarching framework of a CSR initiative.

In the second instance, there are parts of the Compact that address the matter of education specifically. As mentioned above, academic institutions can be members of the Compact. In October 2009, there are 326 academic members, and the purpose of their membership is said by the Compact to be twofold – to enhance and develop knowledge of corporate citizenship, as well as to play a part in educating future business leaders with a focus on responsible citizenship. In the latter regard, in 2007 the Compact published the “Principles for Responsible Management Education” (UNGC, 2007). The premise of this document is that

Academic institutions help shape the attitudes and behavior of business leaders through business education, research, management development programs, training, and other pervasive, but less tangible, activities, such as the spread and advocacy of new values and ideas. Through these means, academic institutions have the potential to generate a wave of positive change, thereby helping to ensure a world where both enterprises and societies can flourish (Ibid: 3).

The document goes on to list six principles that amount to a commitment on the part of academic institutions, and those therein who are involved in the education of business leaders, to educate and train future leaders with principles of responsibility and sustainability in mind. Thus, this is a clear recognition on the part of the Compact that change in regard to corporate behaviour necessarily involves processes of education, the idea being that in order for it to work, the

values of the Compact (and more generally, the values of CSR) need to be incorporated into all aspects of a corporation's operations and behaviour.

These aspects of the Compact are important and innovative in terms of changing the ethos that surrounds independent information about corporations, as well as the ethos generated through business leader education. An argument could be made that such initiatives could be more far reaching. Bearing in mind that the purpose of the AAIP is to give voice to those whose rights in relation to corporations are not clearly defined and are often not at the forefront of corporate decision-making, the condition of pre-consultative learning is best directed at those who are not already in privileged positions with regard to corporate life. Of course, CSR education is important, but educating future "leaders" in the practice and value of CSR is a substantially different thing from equipping those who are already disenfranchised in relation to corporations to be able to contest, challenge and understand how they can have their say in relation to corporations.

The key idea in this is that CSR education through prestigious academic institutions might easily be responsible for the replication of the hegemonic nature of CSR practices as they currently stand. The value of pre-consultative learning is that it would heighten understanding of what are considered to be "non-negotiable values" (see above) amongst those affected by corporations, as well as raising awareness that perhaps such values ought not be taken as given. In broadening out the sort of education that takes place with regard to CSR, the hope is that the condition of pre-consultative learning would have a similar expansive effect on other conditions, in particular the consultative forum. Pre-

consultative learning should enable people to question the fundamentals of CSR and corporate behaviour in an equivalent way to the manner in which powerful corporations advocate current CSR practices. Pre-consultative learning is thus about facilitating resistance, dialogue or participation where necessary.

In terms of how this might take place within the Compact, this is where the learning network structure of the Compact would be valuable. Given that the Compact incorporates multi-sector actors, it ought to be possible to include an educational aspect to the Compact's activities, most likely within its local networks, and through local schools. NGOs, academics and the "other" stakeholders in the Compact are the most crucial here. It is important that pre-consultative learning does not become akin to educational outreach programmes that are part of many CSR processes. The aim of a process such as this would have to be clear. The value of it is in the manner in which it enables people to contest challenge and understand the process of global capitalism, and not in the extent to which it endorses CSR or the Compact *per se*. This process also ought to actively encourage people to participate in the four other conditions, and where necessary facilitate this.

As detailed above, the Compact is widely criticised for endorsing a cosy UN-business relationship. In implementing a pre-consultative learning process, the Compact could work to assuage this criticism by provoking and stimulating ideas and thoughts that might be considered to be somewhat beyond the pale in current CSR processes. If the point of CSR is to make corporations more responsible to the societies in which they operate, then surely it is clear that the people who live

in those societies need to be well equipped to engage in this process. The extension of the learning and educational aspect of the Compact would seem a feasible and much desirable addition to the Compact.

7.4.2 Condition 2: Transparency and Disclosure of Information

As discussed in chapter six, transparency and disclosure of information involves two different components – proactive disclosure of information prior to decision-making taking place, and reacting to requests for information disclosure. Again, like condition one, this is to do with the democratisation of knowledge and information in relation to corporations, and is seen to be vital in terms of enabling people to participate in the whole process of the five conditions. As mentioned as well in chapter six, and drawing on what has been said about CSR and non-negotiable values, this condition should not be seen to be constrained by the market-driven requirement that privacy of information is required in order for corporations to function efficiently within the market. If all corporations are required to do this, then they will all be performing on an equal basis in any case.

In relation to the Compact, its success in regard to the transparency requirement is mixed. In the sense that the Compact functions on the basis of the disclosure of reports regarding CSR performance and results, it can be said that transparency is part of the wider initiative. Indeed transparency is name-checked regularly by the Compact's advocates, and it is argued that transparency is one of the core goals of the Compact overall (Ruggie, 2002: 6; Kell, 2005: 77). Kell makes the point that transparency was improved with the introduction of the COP requirement in 2004; this was part of a process of decentralisation, freeing the Compact's office

from the “impossible mission of providing assurance in a centralised fashion” (Ibid: 72). Transparency, he argues, is something that will grow and improve over time as the Compact does so (Ibid). However, as was mentioned in chapter 6, transparency when it means just reporting (i.e. transparency after decisions have been taken), is classed instead as evaluation by the thesis, and as such is not seen as part of this second condition.

The Compact also deals specifically with the matter of transparency through the tenth principle, which was introduced in 2004, that states "Businesses should work against corruption in all its forms, including extortion and bribery." (see Appendix 2). In this guise, transparency is seen as part of an attempt to eradicate corruption. The Compact argues that there is a clear ethical case for not engaging in corrupt practices, but focuses more extensively on the business case for not doing so. As such, this transparency/anti-corruption principle is to do with encouraging businesses to comply with the rules in relation to fair business practice.

The condition of transparency draws directly from the AAIP, and tries to enforce the idea that people have a right to information about decisions that are to be made that will have a profound effect on their life chances. A requirement as stringent as this is not currently part of the Compact. What this would mean in relation to the Compact is that participating members would have to, presumably as part of the COPs, disclose all information that is relevant to those who will be affected by their activities. The type of information this would require is wide-ranging: from the environmental impact of activities, to the relationship between

corporate profits and wage payments to workers, as well as a corporation's tax arrangements. The idea is that those affected by corporations need clear and honest information in order to participate in the consultative forum of condition three. Given that COPs currently are set up as "after-the fact" reporting, in the sense that they provide reports on activities that have already taken place, the second condition would require that COPs also have a pre-decision making component, rather than just being about reporting. As well as this, corporations would have to, through the Compact, respond to requests for information from those affected by their activities in a non-obstructive manner. Constraining the release of information on the basis that it is market sensitive is not justified and should be actively discouraged, or indeed banned, by the Compact.

In terms of how this condition would operate through the Compact, the most feasible way of doing this is channeling requests for information through the Compact's local networks, so that these requests can be dealt with locally by corporations where possible, and where necessary they can be passed on to the global operations of the corporation. In terms of the proactive disclosure requirement, local networks are again important here. Corporations could, through the local networks of the Compact, arrange meetings and information dissemination points where those who have an interest and who are affected can access open, honest information freely. Information such as this would also have to be posted on the Compact's website, but it is important that information disclosure is not restricted to the website so that access to information is not dependent on access to technology. The key idea in this instance is that it is incumbent on the corporation, and by extension the Compact, to get the

information to those who need it.

Oversight and policing of this condition is difficult. It is hard to see how it can be guaranteed that all information is proactively disclosed. This is why it is important that this is seen as a condition with two components: it is easier to know when specific requests for information have been turned down than when information has been held back. In terms of proactive disclosure, again this is where the institutional structure of the Compact is important. The participation of multi-sector actors can contribute to ensuring that transparency requirements are met, and the publicity element of the Compact will enable them to do so. In being able to publish information on the website, participants in the Compact can make public any evidence they might have to suggest that the transparency requirement has not been met.

However, this method of oversight would seem to be somewhat partial or conditional and given the importance of this condition, it is perhaps the case that a more stringent way of doing it is required. As was mentioned above, the Compact is avowedly non-regulatory, and so discussion of how to regulate the sort of information that corporations disclose is not on the cards at present. However, given the emphasis that the Compact's supporters place on its status as both a complementary and innovative initiative, there are two foreseeable options in relation to condition two. Either the Compact, with all its multi-stakeholder participants, becomes an advocate for change in terms of the laws related to information-disclosure, so that proactive disclosure of information relating to CSR performance becomes a (global) regulatory requirement in the same way

that financial information is at a domestic level. Or, the Compact adopts a policing role itself with regard to information disclosure and corporations. The latter option in this instance would seem unlikely to come about, given the emphasis Kell places (as mentioned above) on the impossible task of the Compact's office overseeing the transparency requirements of corporations. The former offers more prospects for change, given the Compact's commitment to knowledge dissemination.

7.4.3 Condition 3: Consultative Forum

Condition three involves an institutional component – the implementation of a consultative forum that would facilitate the participation of anyone who is affected by the activities of a corporation in corporate decision-making in matters that involve them. Recall that in chapter six, three important factors of this forum were highlighted. First, it was highlighted that it is imperative that the consultative forum is a meaningful exercise in consultation – rather than a *post-hoc* legitimisation of decisions already taken. Second, it was discussed that the forum must be able to incorporate regional interpretations of global principles. Third, it is also important that the forum explicitly addresses the question of power differentials between participants. The issues on which consultation ought to take place was not specified, given that this would seem a necessarily fluid question. However, some obvious possibilities were mentioned, such as environmental impact, use of natural resources, employment terms and taxation arrangements.

The extent to which the Compact provides a consultative mechanism for those who are affected by its participants' activities is limited. In terms of how the

Compact operates, the participation of various different stakeholders through the learning networks of the Compact could be seen to be a form of consultation. The ability of all stakeholders to contribute to knowledge about corporate responsibility and the Compact is part of this in the sense that reviews and reports on the Compact's work, as well as the work and views of all participants, are accessible to those participating in the network. Thus the Compact functions partly on the basis of consultation of stakeholders, and over time various consultation processes have resulted in new principles being adopted and new initiatives being started. Some examples in this regard are the introduction of the tenth principle (anti-corruption) in 2004, after a long series of consultations, as well as a consultation process initiated by the UN High Commissioner for Human Rights in cooperation with the Compact office, on the relationship between business and human rights (see OHCHR, 2004). At any one time, on the Compact's website there are a number of initiatives that call for stakeholders participation in and endorsement – as of October 2009, the time of writing, there was a call for business participation in an initiative called Caring for Climate, as well as a CEO Water Mandate, which provides a strategic management framework to help businesses to address the global water crisis. As such, the manner in which the Compact operates is akin to a consultative process, in that it is not a top-down, regulated institution. The learning network form allows for ongoing consultation of all stakeholders, and thus the evolution of the Compact is dependent on a consultative process.

However, the type of consultation that is advocated in the thesis is different to this. In terms of the three criteria laid out above, the Compact does not meet any

of them. Consultation of the type advocated here would mean that corporations consult with those who are going to be affected by their activities prior to decisions taking place, so that consultation affects the decisions that are made in a substantive way. As well as this, the consultation that the Compact currently practices is voluntary and sporadic. The thesis has argued that the AAIP constitutes an *obligation* on the part of corporations to consult with those who are affected, and also demonstrate not only the extent to which that consultation has been taken into account, but also actively seek to make decisions that help those who do not already have a voice within the structures of the corporation. As has been discussed, the AAIP must not work to privilege those groups who are already in a powerful position in relation to corporations. As such, consultation within the Compact, in order to meet the requirements of the AAIP, would need to work to the advantage of lesser powerful groups, rather than being a “talking shop” in which the assumptions of current CSR practices are reified and replicated.

In terms of changes the Compact would need to make in order to do this, it seems that at a very minimum a substantive consultative process would have to be a requirement of participation in the Compact, in the way that the COP currently is. Although the COP is in some ways a consultative mechanism, it is about reporting on progress already made, not about discussion of decisions before they are taken. The Compact could facilitate a consultative process throughout its local networks, whereby regional and local interpretations of corporate practices could be discussed and deliberated upon. In its oversight of this process, it would seem necessary that the Compact take on some form of mediator role, in order to

avoid the process being a hegemonic one in which the opinions and views of already powerful groups trump those who are less powerful. Again, this is where the question of negotiable and non-negotiable values comes in. The Compact would have to facilitate open and free discussion of the terms on which a corporation would gain support (or, indeed, permission or a license to operate) for its activities and decisions.

Consultation, thus, would need to take place in a way that the power inequities of the relationship between the corporation and those affected by its activities are mitigated by the oversight role played by the Compact. This is where the Compact, as part of the UN, could assert a form of public authority over the proceedings, in a way that would demonstrate the Compact to be independent from its powerful corporate members and the conception of CSR that has come to prevail. In the sense that the Compact has been set up as a specifically non-regulatory instrument, it is difficult to see how the Compact would take on this sort of role. While the emphasis of the Compact is on partnership and dialogue, presumably the argument against the Compact taking on a form of arbitrator of public values role would be that this would act as a deterrent for corporations to become part of the Compact.

However, within the form of a learning network, surely there ought to be scope for, at a minimum, widening out the discussion beyond the parameters that are already set within the Compact. Although the ten principles that form the core of the Compact are well defined and have an international legal grounding, it ought to be recognized that justice in relation to corporations and in relation to the

Compact, would often require more than compliance with these standards. It needs to be explicitly recognised by the Compact that legitimate (and indeed just) behaviour on the part of corporations is not always guaranteed by the recognition of the ten principles of the Compact. Although compliance with these principles would go a long way towards improving corporate behaviour, the argument of the thesis has been that justice applies to corporations because of the profound effects corporations have on people's life chances. While these effects are often to do with human rights, or labour rights (which are covered by the Compact), they are also often to do with, say, the land rights of indigenous peoples, or the rate of pay to employees relative to the rate of profit generated by a large corporation, which are not covered by the Compact. Thus an arrangement that would go some way towards the recognition of justice by the Compact would involve the Compact arbitrating with these, currently non-negotiable, values in mind.

7.4.4 Condition 4: Evaluation

As discussed in chapter six and above, there is an evaluative element to the Compact. Corporations are expected to provide a COP annually, and the report is expected to follow the framework for evaluation set out by the GRI. Three problems were highlighted in chapter six with many evaluative mechanisms of CSR practices, which related to both principles. First, it was argued that in general evaluative mechanisms are weakened by the fact that there is no obligation for corporations to undertake any evaluation of their performance in relation to CSR standards. Second, many evaluative mechanisms are undertaken by corporations themselves, rather than by an independent body; this undermines

the objectivity of the process. Third, evaluating corporate performance in relation to CSR commitments does not in any way guarantee that the findings of the evaluation must have any impact upon corporate activity.

The main evaluation mechanisms of the Compact are articulated through the “Integrity Measures”, which include the COP, as discussed above (see UNGC, 2008b). Another part of this evaluation mechanism that is undertaken by the Compact itself is in instances of alleged “systematic and egregious abuse” of the aims and values of the Compact. In such instances, the Compact commits to contacting the corporation involved, to determine whether there has been abuse. In instances where there has, the Compact commits to take actions such as referring the corporation to another UN entity’s dispute mechanism, dealing with the matter through its own offices or through the Compact board, or requesting that a local Compact network deal with the matter. All these possibilities are at the discretion of the Compact, and to be decided on an *ad hoc* basis. In instances of allegations of abuse, failure to enter into dialogue with the Compact can result in a corporation being listed as being non-communicating, and subsequently possibly delisted. As well as this, if the continued membership of a corporation is seen to be detrimental to the reputation and integrity of the Compact, the Compact can also delist the corporation. As such, this is an *ongoing* evaluative process, in which the Compact provides guidance and assistance to rectify situations and allegations that run contra to the values of the Compact. In the sense that the Compact can delist members that it deems to be in breach of the values, it can be said that the evaluation that the Compact performs is primarily an *oversight* function, to maintain its overall integrity and accountability.

It should be noted that these mechanisms have been strengthened in recent years – the integrity measures were only introduced in 2004. As of June 2008, 630 companies had been delisted; this indicates that the process of being delisted is a serious one that does actually take place. However, in terms of the three main difficulties with evaluation mechanisms in general, the first and third are most relevant to the Compact. While providing a COP is a requirement of membership of the Compact, the consequences of not doing so are, at worst, being delisted from the Compact. It does not impact upon a corporation's permission to conduct business. The consequences of being delisted from the Compact are unclear, yet it is difficult to see how anything worse than negative PR could happen. But the Compact in this regard is adamant that it is not a “compliance” initiative and as such the evaluative process that it oversees and facilitates seems more to do with maintaining the institution of the Compact *per se*, rather than ensuring corporations behave in a responsible manner.

This points to the third type of difficulty with evaluation mechanisms. There is no reason why evaluation has to actually impact upon corporate activity. Evaluation under the Compact is primarily to do with maintaining the integrity of the *process of CSR*, rather than evaluating the extent to which membership of the Compact facilitates and ensures just or responsible behaviour on the part of corporations. In many ways this is a similar point to that made above in relation to the consultative forum. Just as it is necessary that corporations take part in consultation prior to important decisions being taken, it is also necessary that evaluation leads to changes taking place within corporate activity, rather than

evaluation culminating in the production and dissemination of a report, and little else. There seems little point in evaluating activities if that evaluation does not also produce an impetus, or indeed a requirement or obligation, to change.

Many of these critiques have been made by NGO members of the Compact, who have called for clarity of the role of the Compact once corporations have signed up to the principles (see Amnesty International, 2003a). The premise of such critiques is the step-by-step reform of the Compact that needs to take place to tighten up areas in which it is alleged it is lacking. However, in order for these changes to take place, it is perhaps the case that the Compact would need to become the sort of body that it is adamant that it is not – a public, regulatory institution that monitors compliance with stringent requirements.

7.4.5 Condition 5: Opportunity for Redress

Chapter six set out four possible circumstances where justice would require that there is an opportunity for redress for those affected by corporate activity. The first two sets of circumstances were described as “first-order” problems, and these described situations in which either fair and just procedure has not been followed (i.e. one or more of the previous four conditions have not been met), or situations in which fair and just procedure has in the main been followed, but commitments and decisions made have not been followed through on. The second two sets of circumstances the chapter discussed were described as “second-order” problems; these are situations in which all fair and just procedures have been followed and commitments have been followed through on, but certain groups have been negatively affected in a way that can be

demonstrated to have been unforeseen, but importantly, are undisputed; or, in situations where all just procedures have been followed, but certain groups maintain that they have been wronged, and this is disputed by the corporation. The first two situations outlined here warrant redress by the corporation; in the case of the second two, it is less clear. There would be a need for independent verification of these allegations, and certainly a need for the alleged abuses to prompt a “learning experience” on the part of the corporation. It was also pointed out that this fifth condition has a role to play in oversight of the do no harm principle, regardless of compliance with the other conditions.

In relation to the Compact, the evaluative mechanism described above is also in a way a method of seeking redress. In situations where abuse has been alleged, members of the Compact, like NGOs or academic institutions, can highlight to the Compact instances of alleged abuse and the Compact undertakes the commitment to investigate; the Compact also, it should be noted, makes very clear that the Compact will make every effort to weed out “prima facie frivolous allegations” (UNGC website). In cases where the Compact refers allegations of abuse to be dealt with through the dispute mechanisms of other UN entities, this could be deemed to be a form of redress. Utting has argued that the Compact could make more of the connection between international legal human rights norms and global corporations, i.e. that breaches of Compact values can indeed be pursued through international law and that the Compact should work to correct the misconception that such law is only applicable to states, but to corporations as well (Utting, 2002: 645). In a more recent statement in this regard, the Compact distances itself explicitly from any involvement in

international law. In relation to the Integrity Measures, the Compact states:

The purpose of these measures in the first instance always will be to promote continuous quality improvement and assist the participant in aligning its actions with the commitments it has undertaken with regard to the Global Compact principles. It should be noted that the Global Compact Office will not involve itself in any way in any claims of a legal nature that a party may have against a participating company. Similarly, the measures set out below are not intended to affect, pre-empt or substitute for other regulatory or legal procedures or proceedings in any jurisdiction (UNGC, 2008b).

However, even if the Compact does not want to get involved in legal disputes, it is reasonable to suggest that the Compact could place more emphasis, within its Integrity Measures, on how it can enable groups to seek redress through existing UN entities.

Again, what is noticeable in this regard is that in relation to both redress and evaluation, as discussed above, the Compact is very focused on self-validation of the institution and process of the Compact itself, rather than focused on justice and corporations. Of course, this is about maintaining the accountability and legitimacy of the exercise, and that is important to the extent that if the Compact must exist, it ought to be legitimate and accountable. But without an explicit way that abuses and wrongs can be pursued and redressed, it is difficult to see how the full process of justice in relation to corporations can be guaranteed.

In terms of how the Compact would allow for redress in a more explicit way, it would seem necessary that either the Compact develops an institutional component to which claims for redress can be brought, or the Compact receives

the claims, and facilitates them by referring them on to a court of law – either state courts, or an international court.

7.5 Stepping Stone or Concession Too Far?

The above section has provided a detailed analysis and critique of the Compact in terms of the five conditions of concessive theory offered in the previous chapter. The purpose of the chapter has been to apply the discussion of global distributive justice to the Compact as an institutionalised example of CSR, and the chapter has done this by addressing each of the five conditions individually. Generally the chapter has been quite critical of the Compact, but the critical comments have been tempered by suggestions on how the Compact could be reformed.

Aside from the specifics of the conditions, the above discussion raises a broader question about global justice, that is most likely impossible to resolve here, but is worthy of discussion. This question is to do with whether it is better from the point of view of justice to engage something like the Compact in the short-term, on the basis that in the long-term it will come to be a stepping-stone to a more just or ideal arrangement. Or whether collusion in this way is in fact detrimental to long-term prospects for realising justice. These sorts of questions were addressed very briefly towards the end of chapter six, and it is important to address them again here in relation to the Compact.

7.5.1 The Long-Haul Argument

As highlighted towards the beginning of the chapter, this dichotomy of the Compact as either a pragmatic stepping-stone, or as an example of corporate “bluewash”, dominate the general debate in the literature. Theoretically speaking, Caney employs an interesting argument that touches on similar larger questions. Using what he terms the “long-haul argument” in relation to the distribution of carbon emission rights, Caney discusses how, on the basis of this argument, an unjust arrangement could be accepted on the basis that it is better in the long-term. Such an argument concedes that the arrangement in question may indeed be unjust, but is also a necessary step towards a later, just, arrangement (2009: 128-129). In relation to the Compact, a similar position would state that it is necessary to engage corporations within the debate, rather than alienate them, so that in the long-term corporations are a willing part of the solution. Thus this concessive approach to justice views the process of CSR as one of long-term reform towards an ideal end.

There are two possible counter-arguments to this view. The first is that, as Caney points out, it would be unjust for corporations to *insist* on particular arrangements that suit them on the basis of this long haul argument, because of course, if they were willing to, say, reduce their size, redistribute their profits more equitably, or indeed assent to more stringent regulation, *they could* – such change is not impossible. This is what aspirational theory is getting at: that such radical change is not beyond the realm of human possibility. Even within the realm of concessive theory, it is clear that from the point of view of justice, it is not just for corporations to *constrain* the process of CSR merely on the basis of this long-haul argument. As the history of CSR, as well as the review of the

literature on the Compact both show, however, this is in fact what happens. Corporations to a great extent have developed and defined the idea of what corporate responsibility is on the basis that anything more stringent than self-regulation will not work because they will not agree to it. Thus what is deemed to be *possible* is very often dictated instead by what is in fact merely desirable from the point of view of corporations. As Caney highlights with a quote from Rawls, “to each according to his *threat advantage* is not a conception of justice” (1999: 116; my emphasis).

This view states, then, that corporations withholding their support for fairer or more just arrangements on the basis of long-term aspirations is itself an act of injustice, and certainly is not a valid reason to prevent progress. Furthermore, justifiable use of this long-haul argument would surely require a clear articulation of what the long-term goal in relation to CSR actually is. The Compact as an institution does not do this, and it is not explicitly clear that those who sign up to the Compact do so with the belief that it is an interim measure towards an eventual arrangement that would constitute justice.

7.5.2 Redrawing the Parameters of the Debate

In many ways this argument gets to the real core of the question of a concessive theory of justice and corporations. There is no one conception of justice and corporations that is widely accepted to which participants in the Compact can work towards. Of course, in relation to distributive justice and the state, there is no one conception either, and it is not desirable that there would be. However, at least in relation to distributive justice and the state, the parameters of the

question, as well as who is involved in the question (or, as mentioned earlier in the thesis, the site of justice) is clear. Such dimensions of the question of global justice are vastly less clear, and the discussion of what these dimensions are only at very early stages.

This thesis contends that global corporations are a vital element in the debate about global justice, and that initiatives such as the Compact and wider processes of CSR are worthy of analysis on this basis. Ruggie's basis for the importance of CSR and global corporations, as well as initiatives like the Compact, is similarly motivated – that corporate power is indicative of a wider reconstrual of what he calls the global public domain (2004) and corporations themselves are indispensable in questions of global justice. As Kuper puts it, harnessing corporate power is vital (2004). As such, the Compact is valuable for its “stepping stone” status because it firstly raises the question of corporate responsibility at the level of a global public authority like the UN and second because it draws into the debate key actors such as corporations themselves, as well as civil society, academics, governments. By setting out the framework in this way, the Compact is a preliminary step towards redrawing the parameters of analysis in relation to justice and corporations.

Having said that, many of the criticisms made above in relation to concessive theory still hold - the Compact could fairly easily do more in relation to pre-consultative learning and education, as well as pushing for more and better transparency and information disclosure. It is difficult to see, on the other hand, how the more stringent demands of the consultative forum could be met, as well

as the opportunities for redress. The key point here is that overall, the operation, aims and objectives of the Compact should not be constrained by the process that has come to be known as CSR. If the Compact is to be a progressive idea that strives towards a more ideal arrangement it is essential that this is not *limited* to corporations' conception of what corporate responsibility is. The suggestions made in this chapter are put forward as small ideas that argue for the enhanced legitimacy and opening up of the CSR process, on the basis that such changes would constitute progress towards justice.

7.6 Conclusion

This chapter has assessed the extent to which the Global Compact meets the requirements of justice that were articulated in chapter six. In terms of the ideal-aspirational ideas, it was argued that the Compact does not in any real way address the matters that are part of the ideal conception of justice in relation to corporations put forward in this thesis. In the sense that the ideas of a property-owning democracy would place limitations on the size of corporations, the way in which profit is redistributed, and executive remuneration, as well as requiring changes in the ownership of corporations, the Compact is an entirely different initiative than that suggested by these ideal requirements of justice. It was acknowledged that this is perhaps an unfair criticism, given that these sorts of ideals are not the ones that the Compact sets out to achieve.

On this basis it was contended that the question of justice and corporations would be developed usefully if advocates of the Compact were to articulate what an

ideal solution would be, given that most advocates acknowledge that the Compact is partial, non-ideal solution. The difficulty of doing this is clear, and in many ways this difficulty points to the relative newness of these sorts of questions. However, as discussed above, opting for less just solutions on the basis that an ideal solution is in the offing is not on its own justifiable. To this end, it was suggested that perhaps a role the Compact might play is in generating a discussion about what an ideal solution might look like, and about what the Compact is aspiring towards.

The bulk of the chapter focussed on concessive theory and assessed the extent to which the Compact meets each of the conditions articulated in chapter six. In relation to pre-consultative learning, it was argued that there is some scope for the realisation of this condition within the Compact in the sense that education and learning is a partial component of the Compact's activities. The situation in relation to the second condition (that of transparency and disclosure) is mixed. Transparency as interpreted by the Compact is to do with the disclosure of results and performance, as well as to do with the tenth principle related to anti-corruption. The thesis views transparency differently to this, arguing that transparency in relation to justice would require the proactive disclosure of information about decisions that have an effect on people's lives, as well as responding to requests for information in a timely and non-obstructive fashion. In order to meet such requirements, the Compact would need to either become an advocate for change in regard to the legal requirements regarding transparency, or provide the facilities for the realisation of this condition.

In terms of condition three, the consultative forum, again the extent to which the Compact meets such a requirement is limited. While part of the operation of the Compact is based on a network of stakeholders who technically can be consulted and offer opinions, etc, this is *post-hoc* consultation, whereas the thesis advocates the consultation takes place before decisions are made. It was argued that the Compact needs to make a substantive consultative process a requirement of Compact membership, while also broadening out its activities to include real instances of injustice rather than just adherence to the 10 principles. Condition four is to do with evaluation. It was argued that in relation to the Compact, the fact that there is no substantial requirement to provide evaluation of performance – while the Compact provides an oversight function with regard to evaluation, failure to conduct evaluations does not constitute a revoking of a licence to conduct business. It was also argued that under the terms of the Compact, there is no reason why the evaluation produced has to impact upon corporate activity, and as such evaluation in this sense legitimises the process of CSR. Finally in relation to the fifth condition, that of the opportunity for redress, similarly to the points made about evaluation, any opportunities for redress that the Compact offers seem primarily to do with maintaining the integrity of the Compact itself as an exercise of CSR, rather than a quest to render corporations more just.

Finally the chapter raised and discussed some of the broader questions in relation to justice and corporations that the foregoing discussion generates. These questions relate to long-standing dilemmas that emerge within politics, about whether change requires step by step reform, and thus possible collusion in non-ideal circumstances, in order to achieve a long-term goal of ideal circumstances

of justice. Or, on the other hand, whether change requires disengagement from non-ideal solutions and holding out for an ideal one. The thesis cannot purport to resolve this, but the discussion of the Compact has illuminated several things. First, there are aspects of the current operation of the Compact that could be relatively easily enhanced or developed with ideal circumstances of justice in mind. Second, in opening up the question of CSR at the level of a global public authority like the UN and in actively inviting other actors into the debate about CSR, the Compact to an extent opens up the process in a democratic fashion. In terms of the ideas proposed here, this is a positive development. Following on from this, and finally, in order for the Compact to be anything to do with questions of justice, its advocates need to articulate more clearly exactly what the Compact is aiming towards. Without this, the Compact could quite easily be dismissed as an exercise in endorsing CSR *per se*. There are reasons to think that the Compact is flexible and progressive in this regard, given the various changes that have been made since its inception. However it seems to be widely accepted that the Compact is only a partial solution. The wider but vital question is whether there is an ideal solution, and if so, what that is.

8: Conclusion

8.1 Introduction

The thesis has addressed the central research question of what demands can and should be made of global corporations by a conception of global distributive justice through a critical interrogation of the phenomenon of CSR. The thesis examined existing conceptions of global distributive justice, which it was argued struggle to cope with the activities of global corporations. The thesis then proposed two sets of principles that ought to apply to global corporations, first an ideal-aspirational set and second, a concessive set: the do no harm and the all affected interests principles, to be realised through the implementation of five conditions through the process of CSR. The thesis concluded by applying these ideas to a working example of CSR, the UN Global Compact. In the discussion of the principles, greater weight was given to concessive theory in an effort to consolidate the aim of the thesis to join theory with practice.

The conclusion of the thesis summarises the main arguments, chapter by chapter. The conclusion then reiterates the wider implications of the argument, and the central contributions the thesis has made. Subsequently, a short section offers some reflection on the research process, highlighting elements of it that were of signatory importance to the overall thesis and the challenges faced in the process. The latter elements feed in to the next section, which details ideas for a future research agenda.

8.2 Thesis Summary

In order to answer the central research question, the thesis explored five sub-questions. In the first instance, the thesis detailed the historical emergence of CSR policies, and developed a theoretical explanation for this emergence, drawing insights from Polanyi and Gramsci. The thesis then provided a justification for the application of principles of global distributive justice to global corporations by critiquing both state-based and cosmopolitan conceptions of distributive justice. Following on from that, the thesis outlined the demands that might be made on corporations in ideal-aspirational circumstances. Subsequently, the thesis outlined the demands of global distributive justice once certain facts are conceded. This led to the proposal that corporations ought to be subject to both a do no harm principle, as well as an all affected interests principle, which could be applied through five conditions of the CSR process. The final chapter applied these ideas to a working example of CSR, the UN Global Compact.

8.2.1 Chapter Summary

Prior to outlining the normative element of the argument, the thesis first concentrated on the history of CSR, as well as the development of a theoretical explanation for its emergence. Chapter two provided some details as to what constitutes a global corporation, highlighting two important features that are important from the perspective of justice. One of these was the adoption of legal personality by the corporation, which enabled the separation of ownership and management within the organisation; the other was the various techniques that

corporations use to globalise their activities. The chapter then detailed three historical periods in which the emergence of CSR can be characterised, loosely defined as a period of corporate philanthropy pre 1945, a period of (failed) attempts at multilateral regulation from 1945-late 1980s, and finally the contemporary period in which CSR has largely become a self-regulatory process. The chapter then detailed the agents, content and procedures involved in CSR processes in general. The value of this chapter was to provide some historical context for CSR which highlights the manner in which it blurs some of the boundaries on which theories of distributive justice rely – national/international, public/private. Furthermore, this historical context also informed the concessive proposals on distributive justice developed in chapter six. In the attempt to strike a balance between desirability and feasibility, the failed attempts at multilateral regulation were important to bear in mind when making recommendations.

Chapter three provided further context for understanding CSR, this time in an effort to explain its emergence, in terms of why CSR emerged when it did, as well as why it takes the form it does. In relation to why CSR emerged when it did, the chapter drew on some insights from Polanyian thought to interpret CSR as a reaction to a Polanyian type resistance to the pursuit and practice of free-market global capitalism. The chapter also argued that Gramscian ideas about the hegemonic bloc of capitalism offer insight into the shape and form CSR takes, in terms of the constraints capitalism puts on the agenda and scope of CSR, as well as in terms of the tools and procedures it uses. These explanations fit in to the wider argument of the thesis by highlighting firstly a certain inevitability about the emergence of the question of the socially responsible corporation and

secondly the way in which capitalism shapes the process and outcomes of the CSR process.

Chapter four moved on to the political theoretical element of the argument. The central purpose of this chapter was to critique three prominent state-based conceptions of distributive justice, as well as to develop a critique of them on the basis of normative and empirical reasons. The chapter categorised these state-based conceptions as being based on notions of citizenship, national self-determination and sovereignty, drawing mainly from the work of Rawls, Miller and Nagel, respectively. The chapter critiqued the various justifications offered by such conceptions for why distributive justice is a question for the state alone. In terms of normative reasons, the justifications of liberal tolerance, collective and cultural identities, and sovereignty, were rejected as insufficient reasons for the restriction of justice to the state, arguing that there are many instances of injustice that could not be resolved by reference to such values. In terms of empirical reasons, the chapter argued that contemporary globalising processes are constituted in part by structures of global governance that are responsible for the articulation and development of norms, rules and standards that affect people's life chances in a way that is important for a conception of justice. Global corporations are one instance of this, and statist conceptions of justice are not designed to deal with such realities.

Chapter five turned to cosmopolitan conceptions of global distributive justice. The chapter first set out some of the main characteristics of a cosmopolitan paradigm of thought, loosely divided into methodological, moral, political and

legal cosmopolitanism. The chapter then discussed some of the main justifications adopted by cosmopolitan writers for thinking about distributive justice in a global sense, and discussed some of the principles they adopt in doing this. In respect of such arguments, the central contention of the thesis is that existing accounts of cosmopolitan justice are incomplete in their implicit omission of the activities of global corporations. The chapter then moved on to develop the central argument of the thesis, which is that the application of principles of justice to global corporations can be justified on the basis that such corporations are responsible for profound effects on people's life chances. The chapter drew on the basic structure debate between Rawls and Cohen that discussed whether the basic structure is made up of only legally coercive institutions, or whether it also includes legally noncoercive institutions, as per Cohen's argument. The thesis agreed with Cohen in this regard, but with a modification that drew on Williams's idea about publicity and justice – i.e. that justice should only apply to institutions that have an element of publicity in their rules. It was argued global corporations are an instance of such an institution – in the way that their activity unavoidably shapes people's life chances, but also in the element of publicity that the pursuit of CSR policies involves.

Having set up the argument that global corporations ought to be subject to principles of global distributive justice, chapter six attempted to develop what such principles should look like. The chapter was divided into ideal-aspirational theory, and concessive theory. In terms of the former, two possibilities were developed. The first drew on the Rawlsian idea of property-owning democracy, and argued that a fully just corporation would have limits placed on its size,

profit generation, taxation and executive pay. The second element to this drew on Cohen's ideas about a just ethos, and contended that Cohen's view, which emphasises the importance of just choices *within* just rules as a conception of justice, would perhaps contend that some form of CSR (in the sense that it is a voluntary self-regulatory process), as well as just rules, would be necessary for the fully just corporation. In terms of concessive theory, the chapter proposed two principles that react to certain facts that are deemed necessary to concede. These were the facts of global capitalism, global corporations, and the manner in which the question of CSR has historically come to be addressed. The first principle the chapter discussed was a do no harm principle, which would set a basic minimum normative standard that could limit corporate activity. The second principle attempts to bring a degree of legitimacy to the CSR process. The AAIP proceeds on the basis that those affected by corporate activity have a right to a say in such activity. The chapter proposed five conditions the CSR process would have to fulfil in order to meet this requirement.

Chapter seven sought to apply the proposals of chapter six to a working example of CSR, the UN Global Compact. The chapter began with a description of what the Compact is and how it works, as well as the central arguments that have been made for and against its activities. The chapter then provided a brief discussion of how the Compact measures up to the ideal-aspirational ideas of chapter six. On these terms it was argued that the Compact does not in any real way meet the aspirational ideas of a property-owning democracy; however it was also acknowledged that this not what the Compact sets out to do. On this basis it was proposed that the project of the Compact might be improved by some articulation

of what the ideal is, given that most of its advocates acknowledge it as a partial solution, or a stepping-stone. In terms of concessive theory, the chapter assessed the activities of the Compact on the basis of each of the five conditions of the concessive theory developed in chapter six. While there is scope for enhancing the Compact relatively easily in some regards – for instance, in terms of conditions one and two – in others, meeting the conditions would seem quite a deviation from what the Compact currently does. The chapter concluded with a discussion of whether the Compact ought to be seen as a valuable stepping-stone towards a more ideal solution, or as a concession too far. It was argued in this regard that if the Compact is to be seen as a stepping stone, then an articulation of what the long term goal is in relation to CSR would be very valuable. It was also suggested that there are some relatively straightforward changes that could be made that would improve the Compact's activities.

8.3 Wider Implications and Central Contributions

The thesis set out to bring together two areas of literature, that of global political theory and that of IPE and global governance-based interpretations of global corporations, in order to explore the demands that could be made of global corporations in terms of global distributive justice. In doing so, the thesis attempted to apply political theoretical ideals of justice to the practice of global corporations and their CSR policies. The motivation for doing this was two-fold: in the first instance, the thesis proceeded from a conviction that discussions of global justice to a great extent neglected empirical realities of the global economy, particularly in terms of the activities of global corporations. In the

second instance, the thesis was motivated by the idea that global corporations have wider societal responsibilities than a narrowly defined commercial remit, and that while CSR was a useful demonstration of this idea, a normative critique of it would be useful in terms of thinking through what it means for global distributive justice.

The remainder of this section details the wider implications and central contributions of this piece of work.

8.3.1 Reflection on the Theoretical Framework

As detailed in the introduction, the thesis adopted a cosmopolitan-liberal framework within which to answer the central research question. Key to this framework was the cosmopolitan concern with the mitigation of suffering, and the liberal contention that possibilities exist for the mitigation of suffering within a (global) institutional basic structure that shapes people's lives to an inescapable degree. The thesis argued that global corporations are part of that institutional structure and the application of principles of global distributive justice, such as those articulated in chapter six, could contribute to the mitigation of that suffering.

However, this theoretical framing throws up two dilemmas for the conclusions of the thesis. In the first instance, a liberal framing of the research questions and the responses suggested by the thesis is problematised to a great extent by the central point within liberalism that the division between public and private spheres is an important one that needs to be maintained for reasons such as liberty and

autonomy, among others. Thus global corporations are private actors are beyond the realm of coercive relations and should not be subject to obligations of justice. However, there are two (related) ways in which the thesis can respond to this. Firstly, while it can be argued that the maintenance of a separation between public and private spheres is a key component of liberalism, it can also be argued that a concern for justice is also a key component. Thus instances of ‘profound effects’, it can reasonably argued, are of more serious concern for liberals. Secondly, as chapter five discussed, the liberal separation of public and private has long been contested, in particular by (liberal) feminist theory, and the thesis contends that the activities of global corporations are another manifestation of this disputed separation.

A further dilemma raised for the theoretical framing of the thesis is the use of a neo-Gramscian critique of CSR, which argues that the constraints of the CSR process are an aspect of the hegemonic control of global capitalism, while the conclusions and recommendations for the reform of CSR are situated within the process of global capitalism itself. This is a tension within the thesis, that comes about as a result of the drive within the work to produce an account of global distributive justice that relates as far as is possible to the empirical realities of the world as we find it, but also draws on a philosophically-grounded argument. As such, the response to this dilemma is to do with the importance the thesis places on feasibility. Firstly, the recommendations of the thesis where possible articulated how the constraints of global capitalism could be avoided such that the process of CSR might be made more just – for instance, the five conditions are to do with enhancing the position of those who are not already well protected

within the structures of global capitalism. Secondly, it is not entirely clear what sorts of recommendations for reform that Gramscian-inspired perspectives could offer to the emergent debate about global distributive justice. While a critique of global capitalism is vital to this debate, it is also important to develop normative solutions that concede to facts. On this basis, it is unlikely that CSR or global capitalism are going to disappear and hence the thesis put forward some suggestions that, while they are vulnerable to this critique, also fulfil the thesis aim of developing an empirically grounded account of global distributive justice.

8.3.2 Global Political Theory

The thesis does not contend that state-based theories of justice are irrelevant. There are some questions of distributive justice that are answerable in the context of the nation-state. What the thesis instead argues is that there are also many questions of justice that are *not* answerable within the nation-state. Thus one of the central contributions of the thesis is to the growing set of literature that does not rely on the state as the locus of activity that is relevant to questions of justice. As detailed in chapter five, many cosmopolitan writers have addressed questions of global justice, but as was argued, the focus for most has been on the role that global public institutions of governance have to play in global justice, rather than “private” actors such as global corporations. The wider implication of having made this argument is that if conceptions of global justice are going to truly take account of globalising circumstances, the parameters of concern must stretch beyond the limitations of the nation-state. If political theory neglects the importance of such actors, its wider relevance will be inherently restricted. On this basis, the thesis should be seen as an attempt to extend the disciplinary

boundaries of political theory beyond the state, as well as the public realm, and to focus the concern on questions of justice on circumstances where people's lives are profoundly affected.

8.3.3 IPE and Global Governance

The role played by global corporations is widely dealt with by the fields of IPE and global governance. However, what the central argument of the thesis has set out to highlight is that the activities of global corporations are a matter for political philosophy, as well as IPE and global governance. As such, the thesis uses the Rawlsian idea of the basic structure to highlight that there is a broad structure of institutions that profoundly affect people's life chances, and that this structure is, as Rawls says, the subject of distributive justice. It is the emphasis that political theory places on the centrality of a series of political institutions with regard to the normative question of justice that is useful to the analysis of the role played by corporations. What the thesis has sought to emphasise is that the newness or unfamiliarity of the globalising circumstances highlighted in the thesis should not deter political theory from thinking through the normative ideals that could be expected to apply in such circumstances. However, the thesis also emphasises that corporations are not immune from normative critique, and that a phenomenon like CSR ought to be scrutinised from the perspective of the impact it has on people's lives. This argument contributes to IPE and global governance-based literature by demonstrating that normative critique of global corporations is possible through a systematic engagement with philosophical ideas. By developing a foundation within political philosophy for the critique and reform of global corporations that has engaged with the process of CSR, the

thesis offers IPE and global governance-based literature a conception of global distributive justice that is currently for the most part missing.

8.3.4 Synergy of the Literature

A development of this point is applicable to both sets of literature. In exploring the relationship between CSR, global corporations and a theory of global distributive justice, the thesis has tried to identify the intersections of the (disciplinary) boundaries that are often perceived to exist between, say, public and private, as well as national and international. What the identification of these intersections points to is the idea that a theory of global distributive justice is of necessity *an amalgamation* of these considerations. As such, global distributive justice needs to take regard of globalising circumstances such as the activities of global corporations, both in their role as actors within structures of global governance, but also in the way they have profound effects on people's life chances. Concomitantly, the question of justice in relation to CSR and corporations cannot just be about endorsing the centrality of market mechanisms to address the societal responsibilities of corporations – it also prompts the use of normative ideals to propose ways in which corporate activity can be reformed. This points to the wider importance of the re-construal of the “public” sphere (in which questions of distributive justice are traditionally thought to be located) to encompass both the global, as well as the market. This complexity of the site of justice where such intersections are located is a necessary component of the question of global justice. The implication of this complexity is that many assumptions about our parameters of concern must be dropped, rendering the issues addressed all the more urgent.

The manner in which the thesis has set out its recommendations is also a contribution to both fields of work. By dividing the recommendations into ideal-aspirational theory on the one hand, and concessive theory on the other, the thesis applies theory to practice. The abstracted nature of much work about distributive justice is of clear value, and certainly one of the primary roles that political theory has is to set out ideal-type demands about what justice requires. However, this thesis set out to address the question of justice in an importantly different way – that is, to think through what justice means in the world as we find it, with particular reference to corporations. In its division between ideal-aspirational theory and concessive theory, the thesis demonstrates that more specific application of theoretical ideas is possible, and indeed desirable. It also demonstrates, however, that concrete realities are most certainly not immune from, and indeed require attention from, the normative perspective of justice.

8.3.5 *CSR*

A final implication of the thesis is the role it has to play in literature that is specifically about CSR, in terms of management and organisational behaviour. It was not a specific aim of the thesis to make a direct contribution to this literature, primarily because the thesis views the question of global corporations and CSR as inherently political, rather than a technical question of how to make CSR “better”. However, there are some broad points that the thesis has made that are useful to that sort of literature. Primarily this is to do with the idea that CSR is about accepting that corporations have responsibilities that extend beyond that of profit generation, and that corporations impact upon people’s lives in a serious

way. This is essentially what prompts approaching CSR from a political philosophical perspective – but it also implies that managerial or technical approaches to CSR research could benefit from engagement with the normative ideals of global justice. Importantly this would imply the broadening out of the CSR agenda to address the fundamental assumptions of the process. As the thesis has emphasised, current CSR processes take as non-negotiable many fundamental assumptions of global capitalism. It is these assumptions that need to be addressed if the circumstances of injustice in relation to corporations, or the suffering inherent in their activities, are to be mitigated. It is often emphasised within the corporate community that a key problem with CSR is that there is a prevailing lack of clarity about what it means and what it is trying to achieve. The thesis suggests that one way of acquiring clarity about it is by looking to some ideals of political philosophy, however abstracted they might be from corporate realities.

8.4 Research Process

The purpose of this short section is to reflect on the research process in general and to discuss what worked, and also how the key challenges of the process were dealt with. Such limitations raise important questions for a future research agenda, which is discussed in the next section.

A central motivation of this work was to apply theoretical ideals to real circumstances of perceived injustice. In doing this, it was necessary to draw global governance/IPE literature together with political theory literature. The

subject areas within each field are vast, and making the connection between them was of core importance to the thesis. What worked in this regard was the key idea of the thesis – that there exists an argument within political theory which states that justice applies in circumstances where an institution has a profound effect on people's life chances, as discussed in chapter five. This theoretical insight opened up the possibility of scrutinising global corporations from a normative perspective that has a solid foundation within the field of political theory.

A second signatory part of the research process was the division of political theory recommendations into ideal-aspirational and concessive theory. Much work regarding distributive justice attracts obvious questions about its feasibility and its applicability, and in many ways this fences off many of the arguments that are made, simply from the point of view it is not possible to see how the ideas would apply or work in the “real-world”. The use of concessive theory in this regard was particularly important – hence the priority given to it within the text – in the way that it allowed certain important facts to be conceded, while retaining the idea that it is desirable and feasible to articulate normatively demanding requirements that could apply to the CSR process.

However, as is perhaps inevitable, the aspects of the research process that worked are also linked to its limitations. The thesis has made the case that both sets of literature gain significantly from speaking to one another. However, the limitation of this approach is that neither area has been developed as fully as the topic might warrant. For instance, in relation to global corporations and CSR,

some generalities have had to be made about the practice of CSR in order to garner a coherent picture of what CSR looks like. CSR is more nuanced and varied than it has been possible to describe. Additionally, the activities of global corporations are also a lot more nuanced – certain corporations take social responsibility seriously, while others don't. CSR is also often differentiated in terms of the home country of a corporation, or the history of a corporation. In relation to the arguments about global distributive justice, again generalities have had to be made to articulate the central arguments of various different thinkers. While it has been pointed out that most political theorists have not addressed the activities of corporations in their work, the question of whether what they have said *could* be applied to corporations has not been explored fully.

While the ideal-aspirational and concessive theory division has been a key contribution of the thesis, it raises problematic questions as well. For instance, has too much been conceded and ought a discussion of global justice aspire to higher ideals? Conversely, although facts are conceded, whether or not the ideas proposed are actually feasible in practice is under explored. The scope of what has been covered within the thesis has certainly brought together two areas of literature in a useful way, but such a project meant that any testing of feasibility outside of the internal logic of the thesis has not been possible. While such testing is not necessarily the goal of a thesis such as this one, it is important to acknowledge awareness of this, especially given the constant effort within the thesis to apply theory to practice.

8.5 Agenda for Future Research

As mentioned above, the limitations of the research process elicit a future research agenda.

8.5.1 CSR

A conception of global distributive justice has been developed here to apply to a broadly conceived idea of what the global corporation is and what constitutes CSR. The thesis presents this conception as a response to the neo-Polanyian and Gramscian analysis of CSR that was developed in chapter three. However, in order to do this some generalisations have to be made about CSR. A deeper analysis would have to acknowledge that CSR does not mean the same thing to all people or corporations. As well as this, some corporations have better records than others at dealing with their societal responsibilities, while many corporations have different ideas about what such responsibilities are. To this end, a productive area of research would be to develop a more nuanced normative critique of global corporations, delineated perhaps in terms of industry, CSR issue area, or indeed country of origin. For instance – the ways in which, say, the oil industry has particular effects on people's lives and what this means for distributive justice: how would the do no harm and all affected interests principle work in that regard? A further area in which the ideas of the thesis could be explored is in relation to the UN Global Compact, with a more detailed and focussed study on its activities.

Future research would also seek to address the applicability of what has been proposed within organisations themselves. The thesis has not been able to

address the way in which CSR is approached and developed *within* corporations, in the sense that it has primarily been concerned with making a political-philosophical argument for the reform of CSR. This critique has largely been externally driven, i.e. from the outside looking in to the corporation, which was necessary in many ways. However it would be of use to address the vast literature that exists within organisational behaviour about the status of CSR within the firm, in order to further discuss institutional limitations and the feasibility of CSR schemes.

8.5.2 Global Political Theory

In terms of the political philosophical component of the thesis, there is much scope for future research. The key purpose of the pursuit of further research in this area would remain the same – to contribute to the growing literature that addresses distributive justice in the context of globalisation. The thesis has argued that the idea of profound effects is one way in which justice in this context can be addressed. Others writing on the subject propose other ways and it would be of value to assess these arguments in relation to global corporations. As well as this it would also be of value to assess the extent to which the argument made here works in relation to other aspects of globalisation that have a similar effect. The political theory that has been addressed within this thesis has covered predominantly analytical thought that is largely Anglo-American in origin and orientation. This limitation was a necessary one, given the breadth of the task at hand. However, it would be of use to address the ethical and normative questions raised by global corporations and CSR from the perspective of continental strands of political philosophy, with particular attention to Habermasian ideals of

discursive democracy, or Foucauldian notions of disciplinarity in relation to corporations.

Finally, chapter six, in proposing the do no harm principle, suggested that further development of this idea necessitated a clearer articulation of basic rights violations in relation to global corporations. It was not possible to do this in this thesis, given the focus that was placed on the procedural aspects of legitimacy raised by the application of the AAIP. Given that the thesis set out to address the process of CSR in particular, this focus is justified, on the basis that the AAIP requires the implementation of certain conditions across CSR procedures, thus addressing the large scope of corporate activity. However, it would be productive to focus some future research on the basic normative standard articulated by the do no harm principle, in the sense of how rights violations can be specified in the context of contemporary intensified processes of globalisation within which corporations operate. It would be important in this regard to discuss the relationship between this idea, and that of humanitarianism, and what the implications would be for the global institutional order.

8.6 Conclusion

The central concern of the thesis - that of the demands that a conception of global distributive justice could make of global corporations in the context of contemporary globalising processes - has been addressed through the critique of existing conceptions of distributive justice, as well as through the development of proposals that apply to corporations and their CSR processes. What has been

articulated is a demanding set of ideals that are not impossible, but are unlikely to be attainable, as well as a set of concessive principles that pay due regard to the need for feasibility in regard to justice and corporations.

The thesis should be seen as a partial response to a problem of the “real-world” that the disciplinary boundaries of political theory make it sometimes difficult to contend with. The question of the just corporation, while perhaps not completely resolved by this thesis, has, through the exploration of the questions posed, been raised as an urgent and compelling matter that it is incumbent upon political philosophy to respond to.

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Appendix One

Rawls's Law of Peoples

Eight Principles

The principles of the *Law of Peoples* are as follows:

1. Peoples are to be free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defence but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime

(source: Rawls, John (2001) *The Law of Peoples*, (Cambridge, MA: Harvard University Press): 37)

Appendix Two

The UN Global Compact

Ten Principles

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption:

Human Rights

1. Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
2. Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

(source: The UN Global Compact Website: www.unglobalcompact.org)